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Thirty-seventh session
26 February-23 March 2018
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Federation of Western Thrace Turks in Europe, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.18-02371(E)
1802371

Please recycle

The pending question of the freedom of association of the Turkish community in Western Thrace, Greece and non-execution of the judgments of the European Court of Human Rights

Although the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities has turned its twenty-fifth anniversary, persons belonging to minorities in many European countries including Greece continue to be targets of discrimination in social and public life. Minority rights challenges experienced by members of national or ethnic and religious minorities in many European countries cause social and political marginalization.

Under the 1923 Lausanne Peace Treaty, Turkish community in Western Thrace, which has been officially recognized as Muslim minority in Thrace by Greek authorities, has an equal right with the non-Muslim minority in Turkey to establish, manage and control at their own expense, any charitable, religious and social institution, any school and other establishment for instruction and education, with the right to use their own language and to exercise their own religion freely therein.

The first association established by the Turkish Minority is Xanthi Turkish Union; of which first name was "House of Turkish Youth of Xanthi" established in 1927 and registered by Xanthi Court of First Instance. Not only Xanthi Turkish Union, but Komotini Turkish Youth Union established in 1928, Western Thrace Turkish Teachers' Union established in 1936 were legally registered associations with the "Turkish" word in their titles. The signboards of the associations and the minority schools in the region included the word "Turkish" and the names of the associations and minority schools were written both in Greek and Turkish.

The deteriorating relations between Turkey and Greece had an adverse effect in the situation of the Turkish community in Greece. Although Turkish associations were officially registered and continued to operate since 1920's, the Greek government declared in 1983 that there were no Turks in Greece and claimed that the members of Muslim minority are Greek Muslims. Xanthi Turkish Union, Komotini Turkish Youth Union and Western Thrace Turkish Teachers' Union were dissolved in 1986 by local courts and the Supreme Court decided the dissolution of the associations on the ground that the statute of the association that was contrary to public policy and constituted a threat to democratic society with an aim to promote the idea that there was an ethnic minority with the word Turkish which refers to citizens of Turkey and could not be used to describe citizens of Greece.

The ban on the associations; namely, the "Western Thrace Turkish Teacher's Union", the "Komotini Turkish Youth Association" and the "Turkish Union of Xanthi" still continues today. Following the exhaustion of the internal remedies, there are three cases which have been brought before the European Court of Human Rights concerning the dissolution and refusal to register associations established by the persons belonging to Turkish Minority of Western Thrace, Greece:

1. Evros Prefecture Minority Youth Association: The Case of Bekir-Ousta and others (35151/05), judgment of 11/10/2007, final on 11/01/2008
2. Xanthi Turkish Union: The Case of Tourkiki Enosi Xanthis and others (26698/05), judgment of 27/03/2008, final on 29/09/2008
3. The Cultural Association of Turkish Woman in the Prefecture of Rodopi: Emin and others (34144/05), judgment of 27/03/08, final on 01/12/2008

These three cases concern the dissolution or refusal to register the applicant associations by the competent courts on the sole basis of a suspicion that the applicants intended to promote the idea that an ethnic minority existed in Greece. The Court held unanimously that there had been a violation of Article 11 (freedom of assembly and association) of the European Convention on Human Rights in both cases, which concern associations founded by persons belonging to the Muslim minority of Western Thrace.

Further to the European Court of Human Rights' judgments, the applicants requested the cancellation of the decision dissolving them (the case of Xanthi Turkish Union) or submitted a new registration of their associations before the national courts. The applications have been declared inadmissible on the ground that it is not possible to cancel a domestic decision which has become final in the context of non-contentious procedure following a judgment of the ECtHR, and that domestic law does not provide, in civil matters, for the reopening of proceedings following a finding of violation by the ECtHR.

Amendment to Article 758 of the Code on Civil Procedure which would allow the applicants to have their applications requesting their associations' registration or the reversal of the judgments ordering the dissolution of their associations was, initially, debated in the Greek parliament on 19 September 2017. Upon severe and harsh reactions of the junior coalition partner Independent Greeks (ANEL) and no support by other opposition parties of New Democracy and Democratic Alliance, the Ministry of Justice decided to withdraw the draft legislation[1]. Withdrawal of the draft legislation caused a great disappointment among members of the Turkish community of Western Thrace. Anti-democratic, even racist explanations by junior coalition partner ANEL and prejudgments against members of the Turkish community prevented the draft legislation to be discussed in the Greek parliament[2].

Following amendments in the first draft by the Ministry of Justice, on October 10, 2017, the amendment was discussed in the Greek parliament and coalition parties SYRIZA and ANEL and some MPs from opposition parties voted in favour of the amendment. The legislative procedure of adoption of has been concluded by the Greek parliament with the adoption of Law No. 4491/2017 on October 10, 2017.

The admissibility of an application of revocation or amendment following an ECtHR judgment to be issued in the future is now subject to the terms and restrictions provided in the relevant provisions concerning the protection of national security, public order, and the protection of rights and freedoms of others and international conventions implying the Treaty of Lausanne which officially refers to the religious affiliation of the Turkish community in Western Thrace with the term "Muslim minority in Thrace".

Although the ECtHR ruled that even assuming that the true aim of the three associations had been to spread the idea that there was an ethnic Turkish minority, this did not alone amount to a threat to democratic society or contrary to public policy, Law No. 4491/2017 introduced restrictions provided in the relevant provisions concerning the protection of national security, public order, interests of third parties and international conventions.

As a recent development, relevant domestic court in Komotini did not approve the request of the Rhodope-Evros EPATH Graduated Teachers' Association to change its name as "Rhodope-Evros Minority Schools Turkish Curriculum Teachers' Association" in accordance with the decision taken by the General Assembly on November 18, 2017. While the domestic court approved amendments in statutes of the association, it did not allow the association to change its name with the word including "Turkish" in its name[3].

After the adoption of the new law, Xanthi Turkish Union applied to the domestic court with the demand to have the decision regarding the case it has won at the ECtHR implemented by Greece and official legal entity of the association returned. The Thrace Court of Appeal will hear the case on 9 February 2018. The Cultural Association of Turkish Woman in the Prefecture of Rodopi and Evros Minority Youth Association will apply to the domestic courts for re-opening of the legal procedures and ask for the annulment of the domestic court's decision of non-registration of their associations.

We would like to note that the Council of Europe's Committee of Ministers closely follows the developments about the implementation of Court's judgments under the name of Bekir-Ousta group of cases against Greece since 2008. At its

1 http://www.gundemgazetesi.com/haber/detay/3450
2 http://www.gundemgazetesi.com/haber/detay/3458
3 http://www.gundemgazetesi.com/haberyunanistan/detay/3676

last examination held on 5-7 December 2017, the Committee decided to resume consideration of these cases in case re-opened proceeding are delivered under the mentioned law adopted in October 2017. The Parliamentary Assembly of the Council of Europe recently reiterated its call on Greece to ratify the European Charter for Regional Minority Languages and the Framework Convention for the Protection of National Minorities and fully implement the judgments of the European Court of Human Rights to enhance the rights of minorities in the resolution adopted Resolution 2203 (2018) on the progress of the Assembly's monitoring procedure (January-December 2017) and the periodic review of the honouring of obligations by Estonia, Greece, Hungary and Ireland[4].

Recalling the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, we kindly ask the Government of Greece to fully implement the judgments of the European Court of Human Rights in order to ensure that right to freedom of association for persons belonging to the Turkish community are protected.

4 http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24493&lang=en

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Written statement* submitted by Human Rights Now, a non-governmental organization in special consultative status

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Please recycle

The Cambodia government must end persecution and suppression of political opponents, journalis and civil society in Cambodia.

1. The Fundamental Rights of Cambodians are Being Attacked by the Cambodian Government's Attempt to Silence all Criticism

Over the last year, as the July 2018 general elections approach, the Cambodian government has levelled a devastating campaign of suppression against virtually all critical voices against it, targeting political opponents, journalists, human rights defenders, NGO workers, and activists in Cambodia.

These suppressions constitute serious human rights violations including arbitrary arrests and constant surveillance of political opponents and activists and the dissolution of the major opposition political party, NGOs, and media outlets.

Such suppressions violate fundamental human rights, especially freedom of assembly, freedom of association and freedom of speech.
The suppression of critical political parties, media and civil society organizations also threatens the possibility of a fair election.

Human Rights Now(HRN), a Tokyo-based human rights NGO, expresses deep concerns regarding the severity of the repeated human rights violations and urges the Cambodia government to immediately end its campaign of suppression against the opposition party, NGOs, and media outlets and activists. HRN also requests the international community to take immediate measures to help end the violations.

2. Persecution of Political Opponents

The Cambodia government's suppression of critics reached a shocking new height on 16 November 2017 when the Supreme Court, with government instigation, dissolved the major opposition party, the Cambodia National Rescue Party (CNRP), for allegedly conspiring to overthrow the government after its advances in 2017 local elections. The unjustifiable dissolution is a serious violation of the right to association under the ICCPR and Cambodia's Constitution.

Since CNRP's dissolution, the government has continued persecuting and harassing former CNRP leaders, members, and supporters. On 23 November 2017, the prime minister suggested he would have had former CNRP leaders Sam Rainsy and Kem Sokha killed for their statements to "organize a new government" made during a 2013 peaceful demonstration, echoing June 2017 statements to "eliminate 100 or 200 people" if people protested the result of the local elections, suggesting threats of extra-judicial k.llings.[1]

CNRP President Kem Sokha was arrested on 3 September 2017 for "treason" and remains in pre-trial detention.[2] The arrest was conducted reportedly without a warrant, and it ignores parliamentary immunity guaranteed by the Constitution. Furthermore, exiled former president Sam Rainsy was ordered by a Cambodian court on 29 December 2017 to pay a $1 million USD fine for defaming the prime minister among other charges.[3]

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1 Chheng & Chen, "Rainsy and Sokha 'would already be dead': PM ", Phnom Penh Post, 23 Nov. 2017, http://www.phnompenhpost.com/national-politics/rainsy-and-sokha-would-already-be-dead-pm

2 RFA Khmer Service, "Cambodia Opposition Chief Kem Sokha Calls on Court to Drop 'Treason' Charges", RadioFree Asia, 14 Dec. 2017, http://www.rfa.org/english/news/cambodia/charges-12142017170449.html

3 Chansy Chhorn, "Cambodia's Sam Rainsy found guilty of defamation, ordered to pay $1 million", Reuters, 29 Dec. 2017.

Former CNRP members were placed under a five-year ban for political activity[4] and faced accusations of corruption, treason, and violence; a requirement to declare their finances or face imprisonment;[5] police investigations of their finances; and proposals to have their finances seized or restricted and their passports revoked.[6] Local CNRP officials face government threats to coerce them to defect to the CPP, including police surveillance, visits, and arbitrary prosecutions.[7]

3. Suppression of Civil Society and Media

Government harassment also extends to critical civil society and media voices.
On July 2017, the Interior Ministry ordered the election-monitoring group Situation Room to stop its activities, thus preventing *de facto* monitoring activities to ensure *free elections*.[8]

In September 2017, the government shut down the Cambodia Daily for alleged tax law infringement. In late 2017 the government also shut down at least 19 radio stations, including Radio Free Asia, Voice of Democracy and Voice of America, for allegedly failing to report how much airtime they were selling. the dissolutions almost exclusively targeted stations that carried independent content.[9] Two critical journalists, Yeang Sothearin and Uon Chhin, were also detained by police in November 2017 for allegedly producing news for their recently banned station.[10]
Two environmental activists with the NGO Mother Nature were arrested by police in August 2017 and their NGO dissolved in September after being charged with incitement after legitimately investigating environmental issues.[11] The two activists were convicted on 26 January 2018 for conducting this investigation.[12]

The government has also used the controversial Law on Associations and NGOs (LANGO) to dissolve critical foreign-supported NGOs such as the National Democratic Institute in August 2017, the senior staff members of which were accused of conspiring to overthrow the government and which had its foreign staff expelled.[13] Under LANGO, the government also suspended the NGO Equitable Cambodia in September 2017, an NGO focused on protecting land

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https://www.reuters.com/article/us-cambodia-politics/cambodias-sam-rainsy-found-guilty-of-defamationordered-topay-1-million-idUSKBN1EN0H7?il=0.
4 Sokhean, et al, "'Death of democracy': CNRP dissolved by Supreme Court ruling", Phnom Penh Post, 17 Nov. 2017, http://www.phnompenhpost.com/national-post-depth-politics/death-democracy-cnrp-dissolved-supreme-court-ruling. The ban affects 188 former CNRP members.
5 Pech Sotheary, "Jail time threat over disclosure of CNRP assets", Khmer Times, 18 Dec. 2017, http://www.khmertimeskh.com/5096478/jail-time-threat-disclosure-cnrp-assets/
6 Mech Dara, "National Police ordered to analyse banned opposition members' finances", Phnom Penh Post, 9 Jan. 2018, http://www.phnompenhpost.com/national-politics/national-police-ordered-analyse-banned-opposition-members-finances
7 Narin & Wallace, "The Reluctant Defectors of Cambodia", VOA News, 16 Dec. 2017, https://www.voanews.com/a/reluctant-defectors-cambodia/4167141.html.
8 Ben Sokhean, "Interior Ministry Issues Stop-Order to Situation Room NGOs", The Cambodia Daily,5 July 2017 https://www.cambodiadaily.com/news/interior-ministry-issues-stop-order-to-situation-room-ngos-132133/
9 Dara & Baliga, "Government closes 15 radio stations ", Phnom Penh Post, 25 Aug. 2017, http://www.phnompenhpost.com/national/government-closes-15-radio-stations
10 The Cambodia Daily, "Two Former Radio Free Asia Journalists Detained in Phnom Penh", 15 Nov. 2017, https://www.cambodiadaily.com/topstory/two-former-radio-free-asia-journalists-detained-phnom-penh-134378/
11 Dara & Baliga, "Environmental NGO Mother Nature dissolved", 18 Sept. 2017, http://www.phnompenhpost.com/national/environmental-ngo-mother-nature-dissolved; LICADHO, "CSOs Call for Immediate Release of Mother Nature Activists"
12 Cambodian League for the Promotion and Defense of Human Rights, "Mother Nature Activists Convicted by Koh Kong court", 26 Jan. 2018. http://www.licadho-cambodia.org/flashnews.php?perm=230
13 Anantha Baliga, "Ministry shutters NDI for Lango violations as US Embassy hits back", Phnom Penh Post, 24 Aug. 2017, http://www.phnompenhpost.com/national/ministry-shutters-ndi-lango-violations-us-embassy-hits-back

rights,[14] and it investigated the Cambodian Center for Human Rights in November, founded by CNRP leader Kem Sokha. .[15]

4. The Government of Cambodia Must Immediately End its Severe Suppression of Critics and Respect Their Human Rights

HRN strongly protests the Cambodian government's persecution and suppression of political opponents, NGOs, journalists, and activists in Cambodia.
Such acts constitute clear grave violations of the freedom of assembly, of association and of speech, and it demonstrates that the government gave no consideration to the Council's September 2017 resolution or to the international community's concerns. To address the urgent situation:

1) HRN urgently calls upon the Cambodian Government to

- immediately end its suppression against critical voices by releasing those arbitrarily detained; end unjustified restrictions against NGOs and activists; reinstate NGOs, media outlets, and the CNRP ; comprehensively revise LANGO and the 2017 revision of the Party Law to make them consistent with its international duties; and ensure that the upcoming general election is free, fair and fully representative of all political parties.

2) Additionally, HRN requests relevant governments and donor communities to

- take all effective measures against the Cambodian government to support implementation of the Council's resolution on Cambodia at the 36th session,
- consider measures such as suspending assistance or other sanctions, until the Cambodian government ends its suppressive conduct.
- regarding the government who continues assistance for the 2018 election, to end assistance to Cambodia's National Election Committee for the 2018 election until Cambodia can ensure a free and fair election by permitting the CNRP to compete..

3) HRN further calls upon the all relevant mandate holders appointed by the UN Human Rights Council to take joint action to halt further violations and restore rule of law and fundamental human rights in Cambodia

4) Finally, considering the fact that the Council's September 2017 resolution on Cambodia was ignored by the Cambodian government

HRN finally calls upon the Human Rights Council to set up a debate on the situation in Cambodia in its 37th session and adopt a resolution call for Cambodia's implementation of the resolution adopted in its 36th session and stop further human rights suppressions in Cambodia.

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14 Sokhean & Meta, "Land rights NGO suspended", Phnom Penh Post, 29 Sept. 2017,
http://www.phnompenhpost.com/national/land-rights-ngo-suspended.
15 Ben Sokhean, "Breaking: PM Says Prominent Human Rights NGO 'Must Close'", 26 Nov. 2017
http://www.phnompenhpost.com/national-politics/breaking-pm-says-prominent-human-rights-ngo-must-close

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Human rights situations that require the Council's attention

Written statement* submitted by Human Rights Now, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

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Please recycle

Myanmar Must Not Obstruct Accountability for the Rohingya Situation and Should Ensure the Rohingya Refugees' Safe Return to a Stable Situation

1. Introduction—Facing up to the Rohingya Crisis

Human Rights Now (HRN), a Tokyo-based international human rights NGO, expresses grave concern over the human rights situation of the Rohingya people in Rakhine State, Myanmar, as well as in Bangladesh where many refugees have fled following violent crackdowns by Myanmar security forces.

HRN urges the Myanmar government to promote accountability for the violence against the Rohingya, as well as to reform its repatriation policy so that the Rohingya can return to their homes in Myanmar.

2. Ongoing violence against the Rohingya and Developments in Government Policies

Following the attack on a military outpost by a group of Rohingya rebels on 25 August 2017, Myanmar security forces launched a large-scale "clearance" operation targeting the Rohingya. There are consistent reports of disproportionate use of force by military personnel and non-state actors, including reports of extra-judicial killings, rape and arson.[1] The turmoil in the Rakhine State is part of a continuous cycle of violence. For example, similar reports of widespread violence by security forces surfaced in 2016 after armed militants attacked the Myanmar security forces.[2]

Because of these attacks, an estimate of over 650,000 Rohingya have fled to Bangladesh since August 2017.[3] These refugees live in overcrowded camps, with poor hygiene, and lack access to healthcare.
For instance, according to UNICEF, "as few as 3 percent of the children arriving from Myanmar are properly immunized."[4]

Additionally, in a camp near Cox's Bazar, Bangladesh, refugees are contracting diphtheria, and 28-related deaths have been reported thus far.[5] The conditions in the refugee camps are clearly placing the refugees at a higher risk of contracting diseases. In addition to illness and malnutrition, the upcoming monsoon season threatens the lives of tens of thousands of refugees.[6]

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[1] "Rohingya Crisis: Bangladesh to Restrict Movement of Migrants", BBC, 16 Sept. 2017, http://www.bbc.com/news/world-asia-41291650. "HRW: Satellite Data Show Fires Burning in Rakhine State," Al Jazeera, 30 Aug. 2017, http://www.aljazeera.com/news/2017/08/hrw-satellite-data-show-fires-burning-rakhine-state-170829065457014.html. "Independent International Fact Finding Mission on Myanmar concludes visit to Malaysia," United Nations Office of the High Commissioner of Human Rights, 11 December 2017, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22522&LangID=E.

[2] OHCHR, "Myanmar: UN expert warns of worsening rights situation after "lockdown" in Rakhine State," 18 Nov. 2016, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20895&LangID=E.

[3] "Rohingya Emergency", UNHCR, http://www.unhcr.org/rohingya-emergency.html ("Since 25 August 2017, as of 7 January 2018, according to UNHCR's family-counting exercise.").

[4] UNICEF, "Rohingya Refugee Children: UNICEF Emergency Response in Bangladesh", 15 Jan. 2018, https://www.unicef.org/infobycountry/bangladesh_100945.html

[5] Ferrie, "Vaccination Ramps Up in Diphtheria-Hit Rohingya Refugee Camps." Reuters, 15 Jan. 2018,https://www.reuters.com/article/us-bangladesh-rohingya/vaccination-ramps-up-in-diphtheria-hit-rohingya-refugee-camps-idUSKBN1F41JU. Bennett, "Rohingya Face Hunger and Disease in Bangladesh Refugee Camp after Escaping Myanmar Violence", ABC News, 24 Sept. 2017, http://www.abc.net.au/news/2017-09-24/rohingya-face-hunger-and-disease-in-bangaldesh-refugee-camp/8978882

[6] Schlein, "Upcoming Monsoons in Bangladesh Put Rohingya Children at Risk", VOA, 17 Jan. 2018,https://www.voanews.com/a/monsoons-bangladesh-rohingya-children/4211488.html.

In November 2017, the Myanmar government signed an agreement with Bangladesh on the repatriation of Rohingya refugees.[7] However, as of the date of this statement, the process of repatriating Rohingya refugees from Bangladesh has been put on hold by Bangladesh authorities.[8] Furthermore, under current Myanmar policies, the Rohingya will still be required to present official documents upon repatriation.[9] This may disqualify most Rohingya, who are considered illegal immigrants and denied citizenship.

Finally, despite an overwhelming number of testimonies from refugees and condemnations from the international community, Myanmar authorities have consistently denied the accusations with the exception of a case where the army admitted to extra judicial killings of victims they called "Bengali terrorists" [10]. The government's denial encompasses actions like the arbitrary arrest of journalists in retaliation for their reports on the refugee situation in Rakhine State, the release of a statement of "non-cooperation" with the U.N. Special Rapporteur along with a denial of access into the country, and the denial of access to the UN fact-finding mission enacted by the Human Rights Council in March 2017.11

3. Myanmar Must Accept Accountability for its Treatment of the Rohingya

Investigation by a neutral third party and transparency is necessary to provide accountability for the responsible parties and fight the core issue of the recurring violence against Rohingya in Myanmar. The UN General Assembly has emphasized the need for transparency through "full, unrestricted and unmonitored access" for investigations in its situation report on Myanmar from 31 October 2017.12 Similarly, the UN Security Council has called upon the Myanmar government to allow transparent investigations and uphold accountability.13 The Myanmar government's denial of the Rohingya situation, including the arrest of the journalists and refusal to allow entry to the UN Special Rapporteur and UN fact-finding mission undermine the call for transparency and accountability.

4. Myanmar Must Do More to Facilitate the Repatriation of the Rohingya Refugees

Concerns have been raised that the repatriation agreement between the Myanmar and Bangladesh governments may not fully ensure the voluntary and safe return of the refugees to a stable situation consistent with the principle of non-refoulement, recognized as customary international law.[14] For example, UN Secretary General Antonio Guterres has

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[7] Holmes, "Myanmar Signs Pact with Bangladesh over Rohingya Repatriation", The Guardian, 23 Nov 2017, https://www.theguardian.com/world/2017/nov/23/myanmar-signs-pact-with-bangladesh-over-rohingya-repatriation.

[8] Cochrane, "Rohingya Repatriation Delayed by Bangladeshi Officials Just Hours Before It was Due to Begin," ABC News, 23 Jan. 2018, http://www.abc.net.au/news/2018-01-23/bangladesh-delays-rohingya-repatriation-over-logistics/9350772.

[9] Holmes, "Myanmar Signs Pact with Bangladesh Over Rohingya Repatriation," The Guardian, 23 Nov. 2017, https://www.theguardian.com/world/2017/nov/23/myanmar-signs-pact-with-bangladesh-over-rohingya-repatriation.

[10] "Myanmar army rejects UN Rohingya abuse claims" BBC 23 May 2017 http://www.bbc.com/news/world-asia-42639418. Rohingya crisis: Myanmar army admits killings 10 January 2018, http://www.bbc.com/news/world-asia-42639418

11 "Two Reuters Journalists Arrested In Myanmar, Face Official Secrets Charges", Reuters, 13 Dec. 2017, https://www.reuters.com/article/us-myanmar-journalists/two-reuters-journalists-arrested-in-myanmar-face-official-secrets-charges-idUSKBN1E71CO. "Myanmar refuses access to UN Special Rapporteur," http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22553&LangID=E. "Myanmar bars U.N. rights investigator before visit." Reuters. December 20, 2017 https://uk.reuters.com/article/uk-myanmar-rohingya-investigator/myanmar-bars-u-n-rights-investigator-before-visit-idUKKBN1EE0UP?feedType=RSS&feedName=topNews&rpc=69. Fact Finding Mission Statement to the Special Session of the Human Rights Council on the "Situation of human rights of the minority Rohingya Muslim population and other minorities in Rakhine State of Myanmar" December 5, 2017 http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22495&LangID=E

12 UN General Assembly, "Situation of human rights in Myanmar," 31 October 2017, A/C.3/72/L.48, https://undocs.org/A/C.3/72/L.48.

13 UN Security Council, "Security Council Presidential Statement Calls on Myanmar to End Excessive Military Force, Intercommunal Violence in Rakhine State," 6 November 2017, SC/13055, https://www.un.org/press/en/2017/sc13055.doc.htm.

[14] UNHCR, "UNHCR Note on the Principle of Non-Refoulement," Refworld, Nov. 1997, http://www.refworld.org/docid/438c6d972.html.

highlighted the risk of a flawed return plan that would result in the relocation of Rohingya from refugee camps in Bangladesh to displacement camps in Myanmar.[15] Additionally, the repatriation solution proposed by Myanmar does not offer long term solutions, such as citizenship and housing, to the Rohingya. Moreover, authorities have rejected opportunities to collaborate with the UNHCR and IOM to craft a repatriation process that could comply with the obligation to uphold non-refoulement.

Myanmar's policies also undermine its obligation under Article 12 of the ICCPR to protect the freedom of movement of the Rohingya.[16] Specifically, the policy requiring the Rohingya to produce official documentation upon repatriation will likely hamper the Rohingya's ability return to their homes in Myanmar, due to their lack of citizenship status, noted above.

5. Recommendations—The Government of Myanmar Must Not Obstruct Accountability for the Violence Against the Rohingya, and Should Reform its Repatriation Policy

HRN is gravely concerned by the refugee crisis and persecution of Rohingya in Myanmar and urges the Myanmar government to:

a. Ensure all military operations and human rights abuses in Rakhine State have stopped
b. Release journalists Wa Lone and Kyaw Soe Oo from arbitrary arrest.[17]
c. Allow the fact-finding mission set in place by the Human Rights Council in March 2017 to enter Myanmar and investigate the alleged abuses.[18]
d. Conduct independent investigations of alleged crimes and hold accountable any official or non-state actor responsible for criminal acts.
e. Allow unfettered access to all relevant international officers and organizations and work alongside international actors to ensure the safe and voluntary return of refugees to Myanmar.
f. Ensure the timely and safe return of Rohingya as opposed to long-term settlement in displacement camps. This includes guarantees of non-recurrence of the violence against Rohingya, reexamining the 1982 Nationality Law to give proper citizenship to the Rohingya population, and respecting their civil liberties.
g. Implement the Governmental Advisory Commission's recommendations released in August 2017 in order to solve the structural issues in Myanmar.

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[15] Paul and Lee, "Bangladesh Agrees with Myanmar to Complete Rohingya Return in Two Years", Reuters, 16 Jan. 2018, https://www.reuters.com/article/us-myanmar-rohingya-bangladesh/bangladesh-agrees-with-myanmar-to-complete-rohingya-return-in-two-years-idUSKBN1F5012.

[16] Beech, ""No Such Thing as Rohingya': Myanmar Erases a History." *New York Times*, 2 Dec. 2017, https://www.nytimes.com/2017/12/02/world/asia/myanmar-rohingya-denial-history.html.

[17] "Two Reuters Journalists Arrested In Myanmar, Face Official Secrets Charges", Reuters, 13 Dec. 2017, https://www.reuters.com/article/us-myanmar-journalists/two-reuters-journalists-arrested-in-myanmar-face-official-secrets-charges-idUSKBN1E71CO.

[18] OHCHR, "Independent international fact-finding mission on Myanmar," 24 Mar. 2017, http://www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/Index.aspx.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by Human Rights Now, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Please recycle

Evacuees of the Fukushima Nuclear Disaster Will Lose Government Assistance Soon

Human Rights Now, a Tokyo-based international human rights NGO, and Greenpeace International[1] are deeply concerned with the human rights situation regarding housing of people affected by the 2011 Fukushima nuclear disaster.

The March 2011 disaster at the Fukushima Daiichi nuclear power station, administered by Tokyo Electric Power Company Holdings (TEPCO) led to mass evacuations of residents from the Prefecture of Fukushima, over 50,000 of whom remain officially evacuated as of December 2017.[2]

During the second half of 2017, three domestic courts found TEPCO liable for damages following the nuclear disaster, two of which also found the government liable for having failed to take preventive measures.[3]

1. Developments in government policy

Over the last several years, the government of Japan has been lifting evacuation orders in areas where public exposure to radiation was permitted to be up to 20 mSv/year, which is significantly higher than the recommended international standard of 1 mSv/year.[4]

Additionally, the Japanese government has slowly decreased its support for Fukushima evacuees.

At the end of March 2017, the government cut off housing support for the 32,000 "self-evacuees" who used to live outside of government-designated evacuation zones. It also stopped counting them in official statistics, which led to an artificial drop in the official number of evacuees despite their continued displacement.[5]

Fukushima Prefecture also announced that it would cease housing support in March 2018 for evacuees from Naraha town and in March 2019 for evacuees from Katsurao village, Kawauchi village, Kawamata town, Minami Soma city, and Iitate village. In total, the government of Japan will stop providing free housing to over 5,000 households by March 2019.[6]

2. Inconsistencies with Human Rights Standards

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1 On behalf of Greenpeace Japan.

2 Fukushima Prefecture's Disaster Response Headquarters, *Heisei 23 nen tōhoku-chihō taiheiyō-oki jishin ni yoru higai jōkyō sokuhō (dai 1729 hō)*, 15 Jan. 2018. http://www.pref.fukushima.lg.jp/uploaded/life/322676_782904_misc.pdf

3 "Government, Tepco ordered to pay ¥500 million in damages for Fukushima disaster", The Japan Times, 10 Oct. 2017. https://www.japantimes.co.jp/news/2017/10/10/national/crime-legal/court-orders-tepco-government-pay-damages-fukushima-disaster/

4 International Commission on Radiological Protection, "2007 Recommendations of the International Commission on Radiological Protection", ICRP Publication 103. http://journals.sagepub.com/doi/pdf/10.1177/ANIB_37_2-4

5 HIRAI Shigeo, " *'Jishu hinan-sha' shinsai tōkei kara jogai – hinan-keizoku, gimon no koe mo*", The Asahi Shimbun, 28 Mar. 2017. https://www.asahi.com/articles/ASK876DSTK87UTNB00S.html; OKADA Hiroyuki, " *'Jishu-hinan' 3.2 man nin, jūtaku-shien uchikiri ni himei*", *Toyo Keizai*, 2 Jan. 2017. http://toyokeizai.net/articles/-/151985.

6 "*Fukushima dai 1 genpatsu jiko ōkyū-kasetsu jūtaku, mushō-teikyō uchikiri – ken, 19 nen 3 gatsumatsu – iitate nado 5 shichōson*", The Mainichi Shimbun, 29 Aug. 2017. https://mainichi.jp/articles/20170829/ddl/k07/040/013000c

(i) The Right to Adequate Housing

The combination of the government's decision to lift evacuation orders in unsafe areas and ending housing support creates financial pressure for displaced persons to return to their previous housing in such areas. However, Principle 15(d) of the UN Guiding Principles on Internal Displacement provides that states must not force internally displaced people to return or resettle in any place where their life, safety, or health would be at risk. Furthermore, Principle 8 of the Pinheiro Principles explicitly calls on states to alleviate the situation of displaced persons living in inadequate housing.

(ii) The Right to Health

The right to health is covered under Article 12 of the ICESCR. Furthermore, among the recent Universal Periodic Review (UPR) of Japan, three countries recommended that Japan ensure evacuees have access to health-care services and that it protect their right to the highest level of physical and mental health.

The Japanese government's reluctance to provide free and comprehensive medical services to all Fukushima evacuees undermines the evacuees' right to health and equality in treatment. This is because in addition to the health risks caused by long-term exposure to radiation, evacuees are also more likely to suffer from various mental disorders, such as Post Traumatic Stress Disorder (PTSD), exacerbated by the instability of prolonged displacement.[7]

The right to health is covered under Article 12 of the ICESCR. Furthermore, among the recent Universal Periodic Review (UPR) of Japan, three countries recommended that Japan ensure evacuees have access to health-care services and that it protect their right to the highest level of physical and mental health.[8]

(iii) Discriminatory treatment of women and children

In GPJ's submission dated 30 March 2017,[9] we noted the particularly discriminatory impact of these conditions on women and children evacuees. These impacts include their right to life itself, the right to the highest available standard of physical and mental health, the right to adequate housing, the rights of internally displaced persons, the right to environmentally sound management and disposal of hazardous substances and wastes, and the right to a safe, clean, healthy and sustainable environment. These discriminatory impacts will be felt for generations unless fairness and justice prevail now.

(iv) UN Recommendations specific to the Fukushima Disaster

The Special Rapporteur on the right to health, Anand Grover, submitted a report to the 23rd Human Rights Council recommending that the government of Japan only permit return of evacuees to evacuated areas when radiation doses

7 *See* Associated Press, "Doctors: Radiation not biggest impact on Fukushima health", The Asahi Shimbun, 10 Mar. 2017. http://www.asahi.com/ajw/articles/AJ201703100015.html. "*Hinan-sha, koritsu fukameru PTSD no osore kyūzō 46%*", *The Chunichi Shimbun*, 13 Mar. 2017. http://www.tokyo-np.co.jp/article/national/list/201703/CK2017031302000122.html.

8 Human Rights Council, Japan Review – 28th Session of Universal Periodic Review, 14 Nov. 2017. http://webtv.un.org/search/japan-review-28th-session-of-universal-periodic-review/5644308605001/

9 Greenpeace Japan, "Submission to the UN Human Rights Council: The Fukushima Daiichi nuclear disaster and violations of survivors' human" 30 March 2017, see http://www.greenpeace.org/japan/Global/japan/pdf/Greenpeace_Japan_UPR_Final.pdfright

had been reduced, as far as possible, to levels below 1mSv/year, and that all persons living in areas with higher exposures be provided with sufficient medical care for a long duration.[10]

Additionally, in 2014, the Human Rights Committee (HRCmt) recommended the government "lift the designation of contaminated locations as evacuation areas only where the radiation level does not place the residents at risk."[11] The Japanese government's policy allowing evacuees to return to areas above the recommended limit of 1mSv/year does not conform to the Grover or HRCmt recommendations.

3. Recommendations

With Tokyo hosting the 2020 Olympics, the government of Japan is putting significant effort into compliance with various international standards. In this context, international scrutiny should be focused on the fundamental rights of Fukushima evacuees who have lost their housing support, or may lose it by 2019 under the government's new policies.

We call on the government of Japan to:

- Provide necessary housing support to all Fukushima evacuees, including those who evacuated from outside the government designated areas,as long as needed to ensure their ability to freely choose where they will live without pressure to return areas where their health or life would be at risk;
- Reverse the decision to cease free housing support for Fukushima evacuees, including so called "self-evacuees";
- Improve health monitoring policies from the perspective of greater protection and conduct annual comprehensive health check-ups for residents and former residents of areas most affected by the Fukushima Daiichi nuclear disaster;
- Reduce the acceptable additional annual exposure level in Fukushima-impacted areas to a maximum of 1 mSv/year, which would reflect the international standard.

10 HRC, 2 May 2013, A-HRC-23-41-Add3, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-41-Add3_en.pdf

11 HRC, 20 Aug. 2014, CCPR/C/JPN/CO/6.

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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Joint written statement* submitted by the American Association of Jurists, Asociación Española para el Derecho Internacional de los Derechos Humanos, France Libertés : Fondation Danielle Mitterrand, the International Fellowship of Reconciliation, and Paz y Cooperación, non-governmental organizations in special consultative status, and Mouvement contre le racisme et pour l'amitié entre les peuples, a non-governmental organization on the roster

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

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Please recycle

Western Sahara: UN responsibility over a Non Self-Governing Territory controlled by an Occupying Power*

Historical and legal background

In 1963, the UN General Assembly (UNGA) included Western Sahara in the list of Non Self-Governing Territories1, to which UNGA Resolution 1514 (XXV) entitled "Declaration on the granting of Independence to colonial countries and peoples" applied.

On 16 October 1975, the International Court of Justice released an Advisory Opinion2 stating, *inter alia*, that "The inferences to be drawn from the information before the Court… are in accord in not providing indications of the existence, … of any legal tie of territorial sovereignty between Western Sahara and the Moroccan State."

On 6 November 1975, King Hassan II of Morocco, invaded Western Sahara militarily and brought thousands of Moroccan civilians into the Territory (Green march). On the same day, the UN Security Council (UNSC) adopted Resolution 380 declaring "Deplorable the realization of the Green March". The Security Council requested Morocco to withdraw immediately all the participants in the march from the territory of Western Sahara.

Subsequently, the UNGA3, while deeply deploring the continued occupation of Western Sahara, urged the Kingdom of Morocco to end the occupation of the Territory and recognized the Polisario Front as the legitimate representative of the people of Western Sahara. The UNGA reaffirmed the inalienable right of the people of Western Sahara to self-determination and independence in accordance with the Charter of the United Nations.

Since then, the UNGA, in recalling the previous resolution when adopting a new one on the "Question of Western Sahara", has repeatedly reaffirmed its interpretation of the legal status of the Territory and the inalienable right of the people of that Territory to self-determination and independence. It also consistently reaffirmed the interpretation of the legal status of the Occupying Power in Western Sahara.

The African Union and the occupation of Western Sahara

On 25 February 2015, the Sahrawi Arab Democratic Republic (SADR)4 requested a legal opinion from the Office of the Legal Counsel (OLC), which was modified on 3 April 2015 on the issue of "the legality in the context of international law, including the relevant UN resolutions and OUA/AU decisions, of actions allegedly taken by the Moroccan authorities or any other State, group of States, foreign companies or any other entity consisting in the exploration and/or exploitation of renewable and non-renewable natural resources or any other economic activities in Western Sahara."

In its legal opinion5, the Office of the Legal Counsel (OLC) recalled that the Kingdom of Morocco invaded Western Sahara on the pretext of claiming the territory, disregarding a formal call from the UNSC to put an end to the declared march into Western Sahara"6.

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1 UNGA Resolution 1956 (XVIII)

2 Western Sahara, Advisory Opinion, I.C.J. Reports 1975, p.12

3 UNGA Resolutions 34/37 (21 November 1979) and 35/19 (11 November 1980)

4 SADR is a founding-member of the African Union

5 https://www.au.int/web/en/newsevents/13174/legal-opinion-legality-context-international-law-actions-allegedly-taken

6 UN Security Council Resolution 379 (1975)

The OLC also recalled that, on 27 February 1976, the day after Spain notified the Secretary-General of its withdrawal as the Administering Power, the Polisario Front, unilaterally proclaimed the Saharawi Arab Democratic Republic, in response to the legal and administrative vacuum created by Spain unilaterally, when it withdrew from its colony without finishing the process of decolonization that the UN entrusted it with.

Furthermore, the OLC stressed that notwithstanding the membership of SADR to both OAU and AU, there is recognition that the people of Western Sahara are not fully liberated and that the SADR controls only a part of Western Sahara7. It also stressed that despite the fact that the Kingdom of Morocco occupies a large part of the territory of Western Sahara, it has never been recognized as an Administering Power of the territory pursuant to Article 73 of the UN Charter.

In its conclusions, the OLC emphasized that the Kingdom of Morocco is not an Administering Power over Western Sahara's territory under Article 73 of the UN Charter and that it also does not have sovereignty over Western Sahara.

The European Union Court of Justice and the occupation of Western Sahara

A. The Association and Liberalization agreement between the European Union (EU) and the Kingdom of Morocco

On 21 December 2016, the Grand Chamber of the Court of Justice of the European Union (CJEU) ruled that the Association and Liberalization agreement between the EU and the Kingdom of Morocco was not applicable to Western Sahara8.

Having considered that Western Sahara is listed by the UNGA as a Non Self-Governing Territory, the Court, in conformity with the provisions of the "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations"9 observed that Western Sahara has a "separate and distinct status [...] in relation to that of any State, including the Kingdom of Morocco" (§ 92) that controls most of the territory of Western Sahara, where a wall of sand was constructed and guarded by the Moroccan army, separating it from the rest of the territory controlled by the Polisario Front (§ 37).

It is worth to recall that besides the above mentioned principle, the "separate and distinct status" of Western Sahara in relation to the Kingdom of Morocco also originates from the international borders that have been established a century ago10 and confirmed in an internationai agreement concluded by the Polisario Front and the Kingdom of Morocco in 199711.

After underlining that the Polisario Front was recognized by the UN as the legitimate representative of the Sahrawi people (§ 105), the CJEU found that the people of Western Sahara must give their prior, free and informed consent for any international agreement to be applicable to the territory of Western Sahara and its natural resources (§ 106).

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7 The rest is occupied by the Kingdom of Morocco (footnote no.11 on page 3 of the OLC's Legal opinion)

8 https://curia.europa.eu/jcms/upload/docs/application/pdf/2016-12/cp160146en.pdf

9 A/RES/25/2625 (24 October 1970)

10 The southern and eastern boundaries with the Islamic Republic of Mauritania were established by the "Convention pour la délimitation des possessions françaises et espagnoles dans l'Afrique occidentale, sur la côte du Sahara et sur la côte du Golfe de Guinée", signed in Paris on 27 June 1900. The Northern boundary of Western Sahara with the territory of the Kingdom of Morocco was delimited by two conventions, the Paris Convention signed on 3 October 1904, and the Madrid Convention signed on 27 November 1912. Its delimitation has been slightly corrected by the Madrid Convention signed on 19 December 1956.

11 The paragraph 3 of the Lisbon Compromise Agreement on Troop Confinement, concluded on 29 August 1997, reads as follows: "This compromise shall in no way change, alter or otherwise affect the internationally recognized boundaries of Western Sahara, and shall not serve as precedent for any argument that such boundaries have changed or been altered."

B. The Partnership Agreement between the EU and the Kingdom of Morocco in the fisheries sector

In his Opinion12, delivered on 10 January 2018, the Advocate General of the CJUE asserts that the Fisheries Agreement is invalid.

The Advocate General states that the people of Western Sahara have been deprived of the opportunity to exercise the right to self-determination on the conditions set out by the United Nations General Assembly.

Since the assertion of Moroccan sovereignty over Western Sahara is a breach of the right of the people of Western Sahara to self-determination, the Advocate General concludes that the EU has failed to fulfil its obligation not to recognise the illegal situation resulting from the breach, by the Kingdom of Morocco, of the right of the people of Western Sahara to self-determination and also not to render aid or assistance in maintaining that situation.

The Advocate General also considers that the Kingdom of Morocco is the Occupying Power in Western Sahara and the manner in which the Fisheries Agreement was entered did not comply with the rules of International Humanitarian Law applicable to international agreements entered by an Occupying Power, regarding the occupied territory.

Applicability of International Humanitarian Law

As stressed by the AU's Office of the Legal Counsel, under the Convention IV with respect to the Laws and Customs of War on Land and its Annex, The Hague Convention of 1907, and other rules of international humanitarian law, the Occupying Power may not change the legal, institutional and political status of the occupied territory. This is because occupation is a temporary status and the Occupying Power should not introduce permanent changes in the occupied territory.
The longstanding Kingdom of Morocco's occupation of Western Sahara has led to a number of gross violations of human rights as well as serious and continuous violations of the Fourth Geneva Convention of 1949.
In particular, it is to be highlighted the violations of Articles 31 and 32 (prohibition of coercion, corporal punishment, torture, degrading and inhuman treatments); Article 33 (prohibition of collective penalties, intimidation, pillage, reprisals); Article 49 (prohibition of deportations, transfers, evacuations); Article 53 (prohibition of destruction of real or personal property belonging, individually or collectively, to private persons); and Article 76 (on the treatment of detainees). Some of these violations may amount to war crimes, crimes against humanity and cultural genocide.

Conclusion and recommendations

Western Sahara is the only Non Self-Governing Territory that does not have a recognized Administering Power reporting to the UN General Assembly in conformity with article 73 of the UN Charter. The great majority of the Territory has been under the Kingdom of Morocco's occupation for more than 40 years.
The undersigned organizations consider that the United Nations have the primary responsibility over Western Sahara and therefore call upon:

- the UN Human Rights Council to create the mandate of Special Rapporteur on the Human Rights violations in the Occupied Territory of Western Sahara;
- the UN High-Commissioner for Human Rights to resume, without delay, the technical missions to Western Sahara and the Sahrawi refugees' camps;
- the UN Secretary-General to report to the UN General Assembly in accordance with the modalities set for the Administering Powers by Article 73 of the UN Charter;
- the UN Security Council to include the monitoring of Human Rights in the mandate of the MINURSO13.

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12 :https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-01/cp180001en.pdf

13 The UN Mission for the Referendum in Western Sahara was created by the UN Security Council with the adoption, in April 1991, of resolution 690 which, by approving the UNSG's reports (S/21360 and S/22464), determinate that the referendum was to be held within 9 months.

*Acción Solidaria Aragonesa (ASA) - Adala UK - Arabako SEAD en Lagunen Elkartea - Asociación de Amigos y Amigas de la R.A.S.D. de Álava - Asociación Amigos del Pueblo Saharaui del Campo de Gibraltar (FANDAS) - Asociación Amigos del Pueblo Saharaui de Toledo - Asociación de Amistad con el Pueblo Saharaui de Albacete - Asociación Asturiana de Solidaridad con el Pueblo Saharaui - Asociación Canaria de Amistad con el Pueblo Saharaui (ACAPS) - Asociación de Discapacitados Saharauis (Aaiún) - Asociación Ecuatoriana de Amistad con el Pueblo Saharaui (AEAPS) - Asociación de Familiares de Presos y Desaparecidos Saharauis (AFAPREDESA) - Asociación Navarra de Amigos y Amigas de la R.A.S.D. (ANARASD) - Asociación Navarra de Amigos y Amigas del Sahara (ANAS) - Asociación Pro Derechos Humanos de España (APDHE) - Asociación Profesional de Abogados Saharauis en España (APRASE) - Asociación Riojana de Amigos de la R.A.S.D. - Asociación Saharaui de Control de los Recursos naturales y la Protección del Medio Ambiente (Aaiún) - Asociación Saharaui para la Protección de la Cultura (Aaiún) - Asociación Saharaui contra la Tortura (Sahara occidental) - Asociación Um Draiga de Zaragoza - Asociacion Venezolana de Solidaridad con el Sáhara (ASOVESSA) - Asociación de Víctimas de Minas (ASAVIM) - Associació d'Amics del Poble Sahrauí de les Illes Balears - Association des Amis de la RASD (France) - Cantabria por el Sahara - Centro de Documentación en Derechos Humanos "Segundo Montes Mozo S.J. (CSMM) - Colectivo Saharaui de Defensores de Derechos Humanos (CODESA), (Aaiún) - Comisión Ecuménica de Derechos Humanos de Ecuador (CEDHU) - Comisión General Justicia y Paz - Comisión Nacional de los Derechos Humanos de la República Dominicana (CNDH-RD) - Comisión Nacional Saharaui por los Derechos Humanos (CONASADH) - Comité de Defensa del Derecho de Autodeterminación (CODAPSO) - Comité de Defensa de Derechos Humanos de Goulimi - Comité de Familiares de los 15 Jóvenes Secuestrados (Aaiún) - Comité de Familiares de Mártires y Desaparecidos (Aaiún) - Comité de Familiares de los Presos Políticos Saharauis (Aaiún) - Comité de Protección de los Defensores Saharauis - Freedom Sun (Smara) - Comité de Protección de los Recursos Naturales (Aaiún) - Comité Saharaui de defensa de Derechos Humanos (Smara) - Comité de Solidaridad Oscar Romero Comité Suisse de soutien au Peuple Sahraoui - Coordinadora Saharaui de Derechos Humanos de Tantan - Coordinadora de Gdeim Izik (Aaiún) - Coordinadora d'Organitzacións No-Governamentals de Cooperació al Desenvolupament (CONGDIB) - Coordinadora Estatal de Asociaciones Solidarias con el Sahara (CEAS – Sahara) - Coordinadora de las ONGs en Aaiún - Federació ACAPS de Catalunya - Federació d'Associacions de Solidaritat amb el Poble Sahraui del País Valencià - Federación Andaluza de Asociaciones Solidarias con el Sahara (FANDAS) - Federación de Asociaciones de Amigos del Pueblo Saharaui de Extremadura (FEDESAEX) - Federación de Asociaciones de Defensa y Promoción de los Derechos Humanos de España - Federación de la Comunidad de Madrid de Asociaciones Solidarias con el Sahara (FEMAS Sahara) - Federación Estatal de Instituciones Solidarias con el Pueblo Saharaui (FEDISSAH) - Forum Futuro de la Mujer Saharaui (Aaiún) - Groupe Non Violence Active (NOVA SAHARA OCCIDENTAL) - Grupo contra la Nacionalidad Marroquí (Sahara occidental) - Liga de Defensa de los Presos Políticos Saharaui (Aaiún) - Liga Saharaui de Defensa de Derechos Humanos y Protección de RW-Bojador - Observatorio Asturiano de Derechos Humanos para el Sáhara Occidental (OAPSO) - Observatorio Aragonés para el Sahara Occidental - Observatorio Saharaui de Protección del Niño (Aaiún) - Observatorio Saharaui de Recursos Naturales Pallasos en Rebeldía y Festiclown - Sindacato Español Comisiones Obrearas (CCOO) - Solidariedade Galega co Pobo Saharaui (SOGAPS) - Unión de Asociaciones Solidarias con el Sahara de Castilla y León - Unión Nacional de Mujeres Saharauis (UNMS) - Unión Nacional de la Juventud de Saguia El Hamra y Rio de Oro (UJSARIO) - Unión Nacional de Estudiantes de Saguia El Hamra y Rio de Oro (UESARIO) - Unión de Juristas Saharauis (UJS) - Unión de Periodistas y Escritores Saharauis (UPES) - Unión Nacional de Abogados Saharauis Western Sahara Resource Watch España (WSRW España) NGOs without consultative status, also share the views expressed in this statement.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by Human Rights Now, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

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Please recycle

Products Suspected of Being Child Pornography are being Openly Sold in Japan

I. Introduction

Child pornography is a fundamental violation of a child's human rights prohibited by Japanese law and the Convention on the Rights of the Child (CRC). The importance of eradicating child pornography is highlighted by the international community's commitment to implement Sustainable Development Goal target 16.2, which refers to ending all forms of violence against children, including sexual violence and online violence.1

In 2016, Human Rights Now ("HRN"), an international human rights NGO based in Japan, has conducted an independent investigation finding that child pornography is widely available in Japan and authorities do not effectively police, monitor or regulate it.2

HRN is deeply concerned by these findings, which demonstrate that current efforts are not adequate to achieve SDG target 16.2 in Japan.

II. The Problem and Legal Regulation of Child Pornography in Japan

In Japanese domestic law, the 'Act on Punishment of Activities relating to Child Prostitution and Child Pornography and the Protection of Children'[3] was adopted on 18 May 1999, based on the international norms enshrined in Article 34 of the CRC. The law has been revised in 2004 and 2014. The 2004 revision sought to incorporate the Optional Protocol to the CRC and the Council of Europe's Convention on Cybercrime. The 2014 revision marked 10 years since the last revision and focused on the rise of the internet, which has led to a strong increase in the number of victims of child pornography.

Japan's revised law on child pornography defines the term 'child pornography' under three items in Article 2(3). Items (i) and (ii) define punishable products as any image involving sexual intercourse or touching of sexual organs which stimulates sexual desire, respectively. While Items (i) and (ii) are straightforward in intent, Item (iii) has provoked disputes. Item (iii) defines child pornography as "any image of a child wholly or partially naked, in which sexual body parts of the Child … are exhibited or emphasized and arouses or stimulates sexual desire"[4] The core intent of Item (iii) is to ensure that even products not involving sexual intercourse could still be punishable as child pornography.

However, authorities are reluctant to monitor, investigate and prosecute Item (iii) proudcts. Their interpretation of the law is too narrow and thus production and distribution of Item (iii) products continues with broad impunity. Also materials which fall within Item (iii) under the category of *chakuero* ("clothed ero", i.e., images where the performer is wearing clothes) are widely distributed throughout Japan, subjecting these children to sexual exploitation.

III. HRN's Investigation of Child Pornography in Japan

From May 2015 Human Rights Now ("HRN"), a Tokyo-based international human rights NGO, investigated whether the Child Prostitution and Child Pornography Act effectively regulated and criminalized child pornography. Based on this one-year investigation covering both online material and visits to physical retail stores in Tokyo's Akihabara district, HRN can confirm that products suspected to be child pornography are widely sold in Japan. This includes:

- Many DVDs blatantly advertised as child pornography;

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1 Sustainability Development Solutions Network, http://indicators.report/targets/16-2/

2 Human Rights Now, "Report on the status and challenge of ending child pornography in Japan", 11 Nov. 2016, http://hrn.or.jp/eng/news/2016/11/11/japan-childpornography-report/

3 "Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children", Act No. 52, 26 May 1999, , translation available at: http://www.cas.go.jp/jp/seisaku/hourei/data/APARCP.pdf.

4 Id.

- DVDs containing pornographic material which advertise their performers to be younger than eighteen;
- DVDs containing pornographic material where performers are suspected to be younger than eighteen by their physical appearance.

These DVDs are widely circulated as commercial products, and they are openly displayed and sold in retail stores, as well as available through online channels.

A. Factors contributing to suspected child pornography's availability

The investigation clearly revealed that material suspected of containing or proclaiming to be child pornography were widely available. Several factors contribute to this situation:

1) Police do not regulate some child pornography because they cannot easily identify if minors are involved due to unknown the ages of performers.
2) Monitoring systems for screening material, distribution, and sales which are meant to detect underage performers do not function properly;
3) A substantial monitoring system for pornographic material falling under Art. 2.3(iii) is lacking.

Especially problematic are videos or images branded *chakuero*. These videos do not include explicit sexual conduct or sexual relations and are therefore regarded as a non-adult product. Because of this, many *chakuero* manufacturers are exempt from any screening procedure established by relevant private sector actors. Since *chakuero* is widely sold in Japanese stores, there seems to be a lack of clarity as to its legal position. From the fact that products falling under Item (iii) are publicly sold in stores, it seems that the stores do not fully understand the regulation of this category and believe that a genre such as *chakuero* is allowed by law.

B. Online Distribution of suspected child pornography

In addition, these products are sold online. Online shopping websites widely offer material suspected of containing child pornography. However, the Internet Contents Safety Association (ICSA), a private sector association, has made efforts to block child pornography. In addition, search engines like Google take steps to prevent child pornography from appearing in their search results. Unfortunately, in spite of these efforts, child pornography, especially fall under Article 2.3(iii)) is widely available online and easily found through search engines.

The following factors contribute to this situation:

1) Relevant manufacturers do not have power to check the age of performers;
2) Material falling under Article 2.3(iii), including *chakuero* or image videos, are not fully recognized or considered as child pornography.

A large part of the solution should be communicating accurate knowledge about the Child Pornography Act, since many Japanese believe *chakuero* (and other materials falling under Article 2.3(iii)) is not considered child pornography. HRN strongly demands a zero-tolerance policy to be enacted and asks the relevant institutions to communicate clear guidelines on which materials amount to child pornography.

IV. Recommendations

Since our report was released in 2016, both the government and private sector have made efforts to tackle with these problems. HRN commends such efforts, however the effort is still slow to address deeply embedded problems surrounding the child pornography in Japan.

In order to protect children from commercial sexual exploitation and online violence, HRN wishes to encourage the Japanese authorities and industry leaders to enhance enforcement efforts, increase monitoring, and tailor the law to adequately ban all forms of child exploitation.

1. To the Government of Japan (the Cabinet Office and relevant cabinet ministers):

- Investigate (a) the reality of production, sales, circulation, and delivery of child pornography, (b) the background of children who get involved in child pornography, and (c) relevant industries and harmful practices, and take necessary steps to prevent such production, circulation, and harm.
- Consider effective supervision methods and legal regulations so that the production agencies that employ children under the age of eighteen actively work to protect children and employees.
- Actively communicate that pornographic material falling under Article 2.3(iii) amounts to child pornography and make its eradication an important mission to all government ministries, municipalities, public institutions, relevant industries and the community at large
- Consider amendment of law to ensure all child pornography to be properly eradicated

2. To police authorities:

- Designate the elimination of child pornography as a priority; allocate necessary financial resources and manpower to it; and establish a zero-tolerance policy for child pornography.
- Confirm the age of performers through its supply chain and actively follow up on cases where the age of the performers is not confirmed.
- Inform all police stations that pornographic material falling under article 2.3(iii) amounts to child pornography. Furthermore, members of the police force should see this issue as a priority and routinely conduct searches and follow up activities at retail stores in their neighborhoods.
- Strengthen its search capability, develop and educate human resources, ensure necessary manpower at each police station, and strengthen existing regulations.

3 .To industry stakeholders:

- Adopt a zero-tolerance policy for child pornography despite the public opinion of genres like *chakuero*
- Adopt a zero-tolerance policy for the production, circulation, sale, delivery, and rental service of pornographic material featuring children, including but not limited to material falling under Art. 2.3(iii).
- Announce a uniform and tightened screening standard applicable to all products in line with current and applicable legal standards.
- Confirm performers' age in the screening phase by using official documents.
- Introduce self-regulation measures for products which allude to being child pornography.
- Establish and carry out guidelines which prohibit retail and online stores which feature child pornography or products suspected as child pornography from handling such products.

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Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by Liberal International (World Liberal Union), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Please recycle

Call to End Modern Slavery around the World

Liberal International (LI) welcomes the 2017 *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* Report of the *International Labour Organisation*, *Walk Free Foundation* and the *International Organisation for Migration* and its conclusions that "international operation[s] should be strengthened between and among governments and with relevant international and regional organizations in areas such as labour law enforcement, law enforcement, migration governance, and fair recruitment, to prevent trafficking, protect victims, and deal with forced labour across borders." As the only political international with a Human Rights Committee and a specifically designated human rights programme, LI has been at the forefront of the debate - and in this sense fully supports and commits to implementing the conclusions from the report.

In this statement LI would like to pay specific attention to the recent discovery of migrant slave actions in Libya and the deteriorating situation with forced labour and sexual exploitation around the world.

Recognising that:

- According to the most recent data released by the *Walk Free Foundation* more than 40 million people worldwide are still trapped in some form of modern slavery
- As per the *Global Slavery Index (2016)*, 30 million people live as modern day slaves just in the Asia Pacific, with India topping the list with 18.35 million modern slaves followed by China, Pakistan, Bangladesh and Democratic People's Republic of Korea
- Those highest at risk include children, women and individuals who are physically or linguistically isolated, culturally disoriented, subjected to crushing debts and with little to no knowledge of their rights
- The issue of modern slavery is a truly global one affecting every single country around the world

Stressing that:

- Slavery has been outlawed in every country around the world yet more people are enslaved today than when slavery was legal
- According to official data released by the *International Labour Organisation*:
  - there are 5.4 victims of modern slavery for every 1,000 people in the world
  - 1 in 4 victims of modern slavery are children
  - out of the 24.9 million people trapped in forced labour, 16 million people are exploited in the private sector such as domestic work, construction or agriculture; 4.8 million persons in sexual exploitation, and 4 million persons in forced labour imposed by state authorities
  - the majority of modern slaves are working in factories, on construction sites, on fishing boats, and in agricultural industries making slave labour a significant part of the global supply chain
  - women and girls are disproportionately affected by forced labour, accounting for 99% of victims in the commercial sex industry, and 58% in other sectors
- According to a *CNN investigation* conducted in October 2017 there are at least nine locations in Libya where illegal migrant slave auctions are taking place with men being sold for as little as 400USD
- Currently Libya does not offer sufficient administration and infrastructure to halt illegal migrant slave auctions, as instability in the country has also created a breeding ground for the trade to take hold

Affirming that:

- All countries have a responsibility to ensure the safe harbouring of refugees in accordance with international law
- Businesses share an equal responsibility, alongside governments, to ensure that their corporate supply chain is free of forced and child labour
- Strict visa requirements and heavy carrier sanctions have made the use of human traffickers and smugglers the only resort for refugees and migrants to reach peaceful and democratic states, resulting in serious human tragedies such as the one witnessed in Libya
- Libya and neighbouring countries have a collective responsibility to restore order by engaging the local authorities, regional and international organisations as well as enterprise

Recalling:

- LI's written statement to the 26th Session of the UN Human Rights Council, which called on -"migration-destination countries to further enable migration for reasons other than asylum-seeking in order to foster an inclusive economic globalization and secure individual opportunities for everyone"
- The Andorra Manifesto adopted at the 70th Anniversary LI Congress in 2017, which reaffirms that asylum is the responsibility of the international community as a whole and simultaneously recognizes the responsibility of liberal societies to help identify and fight the root causes of people fleeing their home countries, whether those causes are economic, political or violent conflicts
- LI's Resolution on "Migration and Integration" as adopted by the 57th LI Congress in Manila, the Philippines, which called for more generous national migration systems, through which both skilled and unskilled workers are allowed to seek work as economic immigrants
- Africa Liberal Network's (LI cooperating organisation) statement published on 28 November 2017 condemning the Libyan slave trade and calling for all of those who are found to partake in such actions to be prosecuted to the full extent of the law

Calls on:

- Governments around the world to follow the example of the United Kingdom, the Netherlands and France and enact laws which require companies to report on their supply chain risks
- Companies to establish supplier's code of conduct and responsible sourcing guidelines, following in the footsteps of Apple and Adidas respectively, in order to eradicate human rights violations in their supply chains
- On the international community to address the root causes of modern slavery by developing long-term strategic, and evidence-based campaigns whereby businesses, local communities, civil society, and governments work together
- All relevant international stakeholders to provide input into the drafting of the international treaty on business and human rights, as set out by a specifically designated intergovernmental working group of the UN Human Rights Council
- All UN member states to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- On all countries which have not ratified the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of year 2000 and on all countries to introduce efficient policies to detect, protect and support victims of trafficking
- On the African Union to make the resolution of the crisis in Libya a priority and assist with the current investigation of the Libyan authorities into the illegal migrant slave auctions in the country
- Educational institutions in functioning democracies to introduce in school curriculum modern slavery and fair trade in order to increase sensitivity on the issue and eventually change the consumer's culture

Commits:

- For liberal parliamentarians in government and in opposition around the world to take a firm stand in their parliaments and speak up against modern slavery around the world and urge their governments to support the adoption of an international treaty on business and human rights
- For liberals in government and opposition to support the work of the UN Special Representative on Business and Human Rights and the *United Nations Global Compact* initiative
- For Liberal International and its Human Rights Committee to continue to work with the Africa Liberal Network, its leadership, and member parties in addressing the escalating crisis with forcibly enslaved African migrants and refugees in Libya

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Joint written statement* submitted by International-Lawyers.Org, the Arab Organization for Human Rights and the Union of Arab Jurists, non-governmental organizations in special consultative status, and International Educational Development, Inc. and the World Peace Council, non-governmental organizations on the roster

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

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Please recycle

War Crimes Committed During the War and Occupation of Iraq*

Focus

This statement focuses on violations of international law during the Iraq War and occupation, and in particular, war crimes committed by the United States of America and its allies (hereinafter, the "***Coalition***").[1] The extent of Coalition war crimes warrants the establishment of an independent international tribunal that can investigate and prosecute such crimes.

Background: The Iraq War

In March 2003, the United States, the United Kingdom of Great Britain and Northern Ireland, and other Coalition members illegally invaded the Republic of Iraq and subsequently occupied the country. Despite the official withdrawal of United States forces in December 2011, the consequences of the occupation remain, and the United States continues to dominate Iraqi political affairs.

Human Rights Violations up to and During the Iraq War

Member States comprising the Coalition were and are bound to comply with their obligations under international law, including the four Geneva Conventions of 1949. International humanitarian law applies equally to all parties to an armed conflict, independent of whether the initial use of force was lawful under legal doctrines related to *jus ad bellum*.[2] Persons who commit or order the commission of grave breaches of the Conventions are individually responsible in respect of such breaches.

During the Iraq War, human rights organizations and news outlets reported multiple and overlapping violations of international law, including grave breaches of the Geneva Conventions. These grave breaches were committed by senior members of the Bush administration, military leaders, and individual unit commanders and individual troops.

War Crimes

In an international armed conflict[3] like the initial Iraq War, war crimes include all grave breaches of the Geneva Conventions, including: willful killing, torture or inhuman treatment, unlawful detention, deportation or transfer of a civilian, denying civilians or prisoners of war of fair trial rights, hostage-taking, and wanton destruction of and appropriation of property.[4]

Further, international humanitarian law applies in the whole territory of States involved in the conflict, whether or not actual combat takes place there.

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1 This March marks the 15th year anniversary of the Iraq War.

2 *See* Yoram Dinstein, *Jus in Bello Issues Arising in the Hostilities in Iraq in 2003*, Isr. Y.B. Hum. Rts., vol. 33 at 2 (2003); Wolff Heintschel von Heinegg, *Irak-Krieg und ius in Bello*, Archiv des Völkerrechts, vol. 41, 274 *et seq.* (2003). There can be little dispute that the invasion of Iraq violated *jus ad bellum* principles and amounted to a prohibited act of aggression, constituting a crime against peace.

3 *Prosecutor v. Tadic*, Case No. IT-94-1-A, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, ¶ 70 (Int'l Crim. Trib. for the Former Yugoslavia Oct. 2, 1995).

4 Geneva Convention I, art. 50; Geneva Convention III, art. 130; Geneva Convention IV, art. 147.

Torture

Since May 2004, human rights organizations and news agencies detailed the use of torture at United States-operated detention facilities, including the Abu Ghraib prison. As described in Maj. Gen. Antonio Taguba's investigation report, the torture at Abu Ghraib included various instances of physical abuse, such as punching, slapping, and kicking detainees, arranging naked male detainees in a pile and then jumping on them.[5] The report also detailed a history of sexual abuse and rape at the prison. Many of these acts amount to war crimes.

Mass Killings and Destruction of Civilian Property

Member States of the Coalition directed attacks against the civilian population not taking part in hostilities.[6] For example, Coalition forces attacked residential neighborhoods and hospitals with cluster bombs and tanks, killing hundreds of civilians and largely destroying civilian property. The extent of death and destruction was exacerbated by the use of depleted uranium in bombs and artillery shells. By deliberately targeting civilians that were not taking part in hostilities, or by using weapons indiscriminately, these attacks violated one of the most fundamental rules of the laws of war and amount to grave breaches of the Geneva Conventions.[7]

The Creation of ISIS

The invasion of Iraq and the policies implemented thereafter exacerbated the growth of extremist ideologies in Iraq and facilitated the growth of terror groups in the region.

The provisional Iraqi government (Coalition Provisional Authority) administered by United States proconsul Paul Bremer disbanded the Iraqi army, banned the Ba'ath party and initiated a purge of the government as part of the "de-Baathification" process. These policies left thousands of Sunni soldiers angry and unemployed, weakened the ability of the newly formed army and security forces to counter terror groups and contributed to the number of radical fighters available to join such terror groups. The soldiers who joined radical and terror forces, with their military training, helped professionalize ISIS as a fighting force.

Second, outward U.S. support of a Shiite-dominated government in Iraq marginalized Sunni Iraqis, pushing them towards protest and resistance, and contributing to the emergence of popular support for ISIS.

Third, at the time of withdrawal of the United States in 2011, the U.S. left behind practically non-existent governmental structures, including a weak national army, creating a power vacuum for terror groups to exploit. A hollow Iraqi military quickly collapsed when attacked by ISIS fighters. As ISIS conquered territory, they seized weapons and military equipment left behind by the Iraqi army and financed by the United States.

Accountability

Ignoring Coalition war crimes in Iraq would amount to a loss of accountability under international law. Moreover, the often-criticized bias of international law—holding only poor and non-Western countries liable for international crimes, while ignoring the crimes of Western powers—will be exacerbated if the international community does not prosecute Coalition crimes in Iraq.

All parties to the Geneva Conventions are required to criminalize and prosecute grave breaches. But Coalition governments have largely failed to do so with respect to war crimes committed by their officials and personnel in Iraq.

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5 *The "Taguba Report" On Treatment of Abu Ghraib Prisoners in Iraq*, Article 15-6 Investigation of The 800th Military Police Brigade, http://news.findlaw.com/cnn/docs/iraq/tagubarpt.html.

6 Kamal Ahmed, *Revealed: The Cluster Bombs That Litter Iraq*, THE GUARDIAN (May 31, 2003), https://www.theguardian.com/world/2003/jun/01/iraq.foreignpolicy1.

7 "The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence, the primary purpose of which is to spread terror among the civilian population, are prohibited." Additional Protocol I to the Geneva Conventions, art. 51(2).

In particular, the United States has refrained from prosecuting its officials for such crimes. In light of the 2017 United States Court of Appeal judgment in *Saleh v. Bush*, the chance of a domestic prosecution in the United States is practically nonexistent.[8] This further compels the need for a separate and independent international tribunal to investigate and prosecute Coalition crimes.

The International Criminal Court (ICC) is, at present, the only international criminal tribunal that could potentially have jurisdiction over the war crimes committed by American and British officials. Although the ICC is continuing with its investigation into claims that British troops abused and unlawfully killed prisoners after the U.S.-led invasion under the theory of personal (as opposed to territorial) jurisdiction, the ICC's jurisdiction over other potential international crimes in Iraq is limited without proof of involvement of nationals of ICC parties.[9] Since neither the United States nor Iraq are parties to the Rome Statute, an ICC investigation of non-ICC nationals would require a referral by the UN Security Council. Such a referral would likely be prevented by a United States veto.

An independent international tribunal for Iraq would strengthen international humanitarian law, provide victims an opportunity to voice the horrors they witnessed and experienced, would bring justice to the persons responsible for them, and would contribute to restoring and maintaining peace. The international tribunal would apply existing international law to which all parties in the Iraq War are bound, including treaty law and *jus cogens* principles.

Recommendations

- The Human Rights Council should urgently appoint a Special Rapporteur to monitor and report on the human rights situation in Iraq.
- The United Nations should condemn illegal acts of torture and mass killings by member States, including the ones committed in Iraq by the United States and the Coalition.
- The United Nations should urgently endorse an international tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of Iraq during the initial invasion and then the subsequent occupation of Iraq by the United States and other Coalition members;
- The United Nations should create a committee responsible for allocating compensation for damages and losses due to the 2003 invasion and the subsequent occupation, including to victims of the Iraq War.

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*Geneva International Centre for Justice (GICJ) The Arab Lawyers Association- UK The Brussells Tribunal, Euro-Mediterranean Human Rights Monitor, Association of Humanitarian Lawyers (AHL), The Iraqi Commission for Human Rights (ICHR), Association of Human Rights Defenders in Iraq (AHRD), General Federation of Iraqi Women (GFIW), Organisation for Justice & Democracy in Iraq (OJDI), The Iraqi Centre for Human Rights, International Anti-Occupation Network (IAON), NGOs without consultative status, also share the views expressed in this statement.

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8 In *Saleh v. Bush*, the United States Ninth Circuit Court of Appeal found that a domestic statute granting government leaders "official-act" immunity had greater weight than international treaties and customary international law that ban aggression, even though the norm against aggression is a nonderogable *jus cogens* norm. *Saleh v. Bush*, 848 F.3d 880, 890 (9th Cir. 2017).

9 Owen Bowcott, *The Hague Says Claims of War Crimes by UK Troops Have 'Reasonable Basis'*, THE GUARDIAN (Dec. 4, 2017), https://www.theguardian.com/law/2017/dec/04/icc-to-continue-investigation-into-claims-of-war-crimes-by-british-troops.

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Human rights situations that require the Council's attention

Joint written statement* submitted by International-Lawyers.Org, the Arab Organization for Human Rights and the Union of Arab Jurists, non-governmental organizations in special consultative status, and International Educational Development, Inc. and the World Peace Council, non-governmental organizations on the roster

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Please recycle

Holding the United States-Led Coalition that Invaded Iraq Responsible for the Crime of Aggression*

Focus

This statement focuses on the troubling lack of accountability for the crime of aggression committed through the invasion of the Republic of Iraq in March 2003 by the United States of America.[1] The failure to hold former government leaders accountable for this invasion is a grave threat to international law.

Background

In March 2003, the United States of America, under President George W. Bush, along with the United Kingdom of Great Britain and Northern Ireland and other coalition countries (collectively, the "***Coalition***"), invaded Iraq.[2] The United States and the Coalition failed to obtain United Nations Security Council approval to employ this use of force in Iraq. The Bush administration tried to justify the invasion with a theory of anticipatory self-defense, citing a belief that the Iraqi government was harboring weapons of mass destruction and suggesting Iraq was connected with the September 11th terrorist attacks.[3]

In January 2004, after the American military action had dismantled Iraqi state institutions associated with the Iraqi government, defeated the Iraqi army and other security forces, and killed thousands of Iraqi civilians, the Coalition abandoned this theory.[4] An official report submitted to President Bush by the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction concluded the Bush administration was wrong on these grounds, and that claims of weapons of mass destruction were unsubstantiated. Scholars retrospectively suggest that this "error" by President Bush was either evidence that Bush-era officials had reason to believe their claims were weak when the United States invaded Iraq, or, that they knowingly and intentionally invaded Iraq at all costs.[5] If the latter is true, this perpetuated a fraud on American citizens and more generally with the international community with respect to the legitimacy of the war itself.

In September 2005, United Nations Secretary-General Kofi Annan declared the United States-led war on Iraq "illegal" because the United States and the Coalition violated the United Nations Charter (the "***Charter***") when they invaded Iraq without the permission of the Security Council.[6]

International Law on the Prohibition of Aggression

During the 1946 Nuremberg Trials, the International Military Tribunal at Nuremberg (the "***Nuremberg Tribunal***") characterized wars of aggression as "the supreme international crime differing only from other war crimes in that it

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[1] This March marks the 15th year anniversary of the Iraq War.

[2] *The Iraq War: 2003- 2011*, Timeline, COUNCIL ON FOREIGN RELATIONS, https://www.cfr.org/timeline/iraq-war (last visited Jan. 20, 2018).

[3] HON. LAURENCE H. SILBERMAN AND HON. CHARLES S. ROBB, COMMISSION ON THE INTELLIGENCE CAPABILITIES OF THE UNITED STATES REGARDING WEAPONS OF MASS DESTRUCTION (Mar. 31, 2005), https://fas.org/irp/offdocs/wmd_report.pdf.

[4] *The Iraq War: 2003- 2011*.

[5] Ronald Kramer, *et al.*, *The Supreme International Crime: How the U.S. War in Iraq Threatens the Rule of Law*, 32(2) SOCIAL JUSTICE 52, 58 (2005).

[6] Ewen MacAskill & Julian Borger, *Iraq War Was Illegal and Breached UN Charter, Says Annan*, THE GUARDIAN (Sept. 15, 2004), https://www.theguardian.com/world/2004/sep/16/iraq.iraq.

contains within itself the accumulated evil of the whole."[7] This holding from the Nuremberg Tribunal was subsequently enshrined in the Charter. The Charter only permits acts of violence against another State committed in self-defense or with the explicit approval of the Security Council.[8] The prohibition of aggression contained in Article 2 of the Charter constitutes a *jus cogens* norm of international law, a norm from which no derogation is permitted and for which there is an obligation on all States to support and sustain.[9] Therefore, the prohibition of aggression applies to the United States, the United Kingdom, and every member of the Coalition, without exception.

The Invasion of Iraq Was Aggression under International Law

The Coalition committed the crime of aggression when they invaded Iraq in March 2003. Despite claims by American and/or British officials that they had approval from the Security Council to invade based on a 2002 Security Council resolution, which threatened Iraq with "serious consequences" if it refused to disarm,10 this was not enough. At no time had the Security Council identified the Iraqi government as a future or imminent threat to international peace, or otherwise authorized an invasion of Iraq.[11] The United States and the United Kingdom were aware of the need for a specific Security Council resolution authorizing the invasion and/or additional use of force, as evidenced by their attempt to pass a subsequent resolution, something they abandoned when it became clear that this additional resolution would be vetoed.12 Ignoring their duty to obtain Security Council approval, the United States and the Coalition invaded Iraq anyway, violating the Charter and breaching the *jus cogens* prohibition against aggression and crimes against peace.[13]

Lack of Accountability over the Iraq War

To date, there has only been one attempt to investigate the issue of aggression in Iraq. From 2013 through 2017, a private class of Iraqi civilians affected by the war sought to hold Bush-era officials accountable through the United States courts, ultimately lodging an appeal and arguing before the United States Court of Appeals for the Ninth Circuit, asking for permission to pursue a lawsuit based on a theory of aggression.[14] However, the Ninth Circuit held that former Bush-era officials were immune from further civil investigation based on the Westfall Act, a law that grants former government officials immunity for acts committed under the "legitimate" scope of their authority.[15] No other serious attempts to investigate the Iraq War and the issue of aggression have been made in the United States or elsewhere.

This lack of accountability sets a dangerous precedent. The illegal war in Iraq not only threatens the doctrine enshrined in the Charter but also erodes the foundation of a world order governed by the rule of law.

The Need for an Independent, International Criminal Court for Iraq

Since the domestic judicial mechanisms of the United States, other Coalition countries or the victim country (Iraq)16 may be ineffective in prosecuting or otherwise examining the issue of aggression, there is a need for an alternative and

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[7] *Nuremberg Trial Proceedings, Volume 22*, The Avalon Project: Document in Law, History and Diplomacy, YALE LAW SCHOOL: LILLIAN GOLDMAN LAW LIBRARY, http://avalon.law.yale.edu/imt/09-30-46.asp (last visited Jan. 21, 2018).

[8] U.N. Charter art. 2, ¶ 4; U.N. Charter art. 39.

[9] *See, e.g.*, *Barcelona Traction* case decided by the ICJ in 1970, holding that the "outlawing of acts of aggression" is obligation *erga omnes* owed to the entire international community. *Barcelona Traction (Belg. v. Spain)*, Judgement, 1970 I.C.J. 3 (Feb. 5), ¶ 34. *See also* G.A. Res. 2625 (XXV) annex (Oct. 24, 1970); G.A. Res. 3314 (XXIX) annex (Dec. 14, 1974).

[10] Security Council Res. 1441 (Nov. 8, 2002).

[11] U.N. Charter art. 39; U.N. Charter art. 44.

[12] *France, Russia Threaten War Veto*, CNN (Mar. 10, 2003), http://www.cnn.com/2003/WORLD/europe/03/10/sprj.irq.france.chirac/ (last visited Jan. 28, 2018).

[13] Guardian Staff, *Chilcot Report: Key Points from the Iraq Inquiry*, THE GUARDIAN (July 6, 2016), https://www.theguardian.com/uk-news/2016/jul/06/iraq-inquiry-key-points-from-the-chilcot-report.

[14] *Saleh v. Bush*, 848 F.3d 880 (9th Cir. 2017).

[15] *See generally* 28 U.S.C.A. §2679.

[16] While the United States formally "left" Iraq in 2011, it continues to dominate Iraqi political affairs through the present.

international judicial platform.

Initially prosecuted on an international level before the Nuremberg Tribunal, the crime of aggression is the supreme international crime. Starting on July 17, 2018, the International Criminal Court (ICC) can narrowly prosecute crimes of aggression, making it the first time since the Nuremberg Tribunal that an international court will be able to prosecute this crime.[17] The ICC's jurisdiction, however, is very narrow and does not apply retroactively. Therefore, the ICC does not have jurisdiction over the crime of aggression committed at the beginning of the Iraq War. Regardless of the lack of jurisdiction over the crime of aggression, the United States would use its veto power to prevent any Security Council-initiated referral in this case. For these reasons, the international community needs a separate independent tribunal to prosecute United States and Coalition officials for aggression.

Like previous international criminal tribunals, an independent international criminal tribunal for the crimes committed in the lead up to the Iraq War will further the cause of justice, enforce and uphold the rule of law, and further international accountability. It will set precedent that no member State can violate the Charter without consequences. Absent such a tribunal, the international rule of law will wither, leading to anarchy and chaos, and ultimately destroying global peace and security.

Recommendations

- The Human Rights Council should urgently endorse an international independent investigation, and in particular, an international tribunal to look into allegations that the United States and the Coalition committed the crime of aggression when they invaded Iraq;
- The Human Rights Council should urgently seek the assistance of independent legal experts and judges who can advise on the creation of an independent tribunal with respect to the crime of aggression committed against Iraq;
- The United Nations should condemn crimes of aggression by member states, including the one committed by the United States and the Coalition when they invaded Iraq.

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*Geneva International Centre for Justice (GICJ), The Arab Lawyers Association- UK, The Brussells Tribunal, Association of Humanitarian Lawyers (AHL), The Iraqi Commission for Human Rights (ICHR), Association of Human Rights Defenders in Iraq (AHRD), General Federation of Iraqi Women (GFIW), Organisation for Justice & Democracy in Iraq (OJDI), The Iraqi Centre for Human Rights, International Anti-Occupation Network (IAON), NGOs without consultative status, also share the views expressed in this statement.

[17] Alex Whiting, *Crime of Aggression Activated at the ICC: Does It Matter*, JUSTSECURITY (Dec. 19, 2017), https://www.justsecurity.org/49859/crime-aggression-activated-icc-matter/.

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Human rights bodies and mechanisms

Written statement* submitted by the Islamic Women's Institute of Iran, a non-governmental organization in special consultative status

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Please recycle

Imposition of Unilateral Sanctions as Violation of Human Rights

Resort to coercive unilateral measures, including economic sanctions, by certain powerful governments against other states has often been justified in the name of punishing policies and practices "violating international law" or "jeopardizing international peace and security or the general interests of the international community."

Absence of effective guarantees to ensure compliance of states with their human rights obligations and weakness of the existing mechanisms for supporting basic human rights on a global scale have, as a matter of fact, led the international community to look for practical ways and means within the international legal system to compensate for such shortcomings, including through the United Nations Security Council. As it happens, powerful states have also taken it upon themselves, beyond the bounds of international legality, to resort to coercive unilateral measures of their own choosing against states whose policies and practices they find objectionable or unacceptable, whether in the field of human rights or in other fields. However, ample evidence from various situations point to the unfortunate fact that imposition of sanctions in the name of combating human rights violations in target societies has for all practical purposes caused widespread, and even massive, economic hardship and deprivation among the popul 'tion, itself an obvious violation of basic economic human rights.

Numerous factual reports, including those presented by the UN Special Rapporteur on Coercive Unilateral Measures, show in very clear terms that innocent people living under the sanctioned government who have nothing to do with the state policies are in fact the main victims of imposed sanctions. Still worse, there exists no established international mechanism for compensation of the collateral damages incurred by the civilian population as a result of such unjustified coercive measures.

Moreover, as many reports demonstrate, imposition of unilateral sanctions also negatively impact the national economy of the target societies in various fields, in particular foreign trade, and banking and financial transactions and services. This is particularly the case for developing societies in general, and those dependent on the export of raw material and import of a wide range of goods and commodities in particular. Over and above such negative consequences of sanctions on the national economy of target societies, it is widely recognized that sanctions also violate the economic and financial rights of individual citizens of the target country, including through the seizure of assets and property by the state resorting to sanctions.

Another collateral impact of the unilateral sanctions imposed on a target state or its governmental institutions accused of unacceptable practices and activities finds itself in the negative effect on the state of economic, trade and banking cooperation between the target country and the outside world. As it happens, imposition of unilateral coercive measures by powerful states tends to frighten other countries and companies from engaging in or expanding economic and trade ties with the target country, even in the fields and areas unrelated to or not covered by the imposed sanctions. Negative impact of sanctions on food, medicine, and other essential goods and commodities are widely known.

It is also a matter of serious concern for human rights advocates across the world that resort to and pursuit of coercive unilateral measures are, more often than not, politically-motivated and remotely related to genuine concerns for the promotion of human rights in target countries. Genuine promotion of human rights, it is universally recognized, calls for apolitical, objective, and non-discriminatory approaches and actions.

In light of the above, The ISLAMIC WOMEN'S INSTITUTE OF IRAN, a non-governmental organization with a record of several decades of activity in defense of the rights of women in Iran and genuinely concerned with the effective promotion of human rights – political, civil, economic, social, and cultural rights - believes that the Human Rights Council, as the main body within the United Nations human rights machinery, needs to address the question of coercive unilateral measures in earnest. We are sure that pro-human rights NGOs in other societies also share our

concerns and support our call. We believe the Council is in a unique position to assist with this matter and bring its highly respected status and weight to bear on the situation, including through specialized panel discussions and subsequent intergovernmental deliberations. Such an approach will – hopefully - lead to much-needed Council decisions in a critical area of international concern.

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Please recycle

Caste-based discrimination in India, with a focus on the practice manual scavenging

Legislative context

Despite being proscribed by Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, there are currently at least 260 million people suffering from caste-based discrimination in the world, the vast majority living in South Asia.[1]

Caste discrimination is a pernicious and deeply ingrained form of structural discrimination, involving massive violations of civil, political, economic, social and cultural rights. Caste systems, having the doctrine of inequality at their core, divide people into unequal and hierarchical social groups. Those at the bottom, known as 'Untouchables' or Dalits in South Asia, are considered 'lesser human beings', 'impure' and 'polluting' to other caste groups. Needless to say, such discrimination is absolutely contrary to Article 1 of the Universal Declaration of Human Rights, stating that "all human beings are born free and equal in dignity and rights".

Despite constitutional safeguards[2] and special legislation for the protection of India's 201 million 'Scheduled Castes', such as The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act of 1989 and its Amendment Bill of 2015, violations of their fundamental rights are reported to continue on a large scale. Since the formation of the present government in 2014, there has been a rise in Hindu nationalism and an increase in the attacks against Dalits and religious minorities.[3] As Human Rights Watch documented in its World Report 2018, vigilante violence aimed at religious minorities, marginalized communities, and critics of the government - often carried out by groups claiming to support the ruling Bharatiya Janata Party (BJP) - became an increasing threat in India in 2017.[4]

Common untouchability practices

Caste-based discrimination takes many forms. The following examples can be regarded as common untouchability practices within a large framework of day-to-day discrimination:

- Segregation in housing, schools and cremation grounds.
- De facto prohibition of inter-caste marriage.
- Limitation or prohibition of access to public places such as roads, temples and tea houses.
- Denial or limitation of access to public services such as water taps, health care and education.
- De facto prohibition of access to ownership of land.

A further form of discrimination against Dalit people is the restrictions on occupation; with their being restricted to the most menial, dirty and dangerous jobs as defined by the caste hierarchy. One such job is manual scavenging, the nature and consequences of which this statement is keen to draw particular attention to.

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[1] http://idsn.org/caste-discrimination/

[2] Article 17 of the Constitution of India has abolished untouchability and its practice in any form, in 1950.

[3] Al Jazeera, India's Hindu Fundamentalists,
http://www.aljazeera.com/programmes/peopleandpower/2015/10/indias-hindu-fundamentalists-151008073418225.html

[4] Human Rights Watch, World Report 2018, India, p. 261-269,
https://www.hrw.org/sites/default/files/world_report_download/201801world_report_web.pdf.

Manual scavenging

Manual scavenging is the practice of manually cleaning, carrying, disposing or handling human and animal excreta from dry latrines, sewers and streets, using brooms, small tin plates and baskets carried on the head. Since Dalits are considered to be polluted by reason of their birth, the task of removing human and animal waste is allocated to them and strictly enforced. They have to work in filthy and abhorrent conditions and are furthermore socially ostracised by most of society in the form of people refraining from touching them (or items they have touched), being verbally abused and being excluded from social functions. Refusal to perform such tasks leads to physical abuse and social boycott.

As Ashif Shaikh, founder and convener of the Rashtriya Garima Abhiyan, a grassroots campaign against manual scavenging, explained: "The manual carrying of human feces is not a form of employment, but an injustice akin to slavery. It is one of the most prominent forms of discrimination against Dalits, and it is central to the violation of their human rights."[5]

The discrimination faced by the Dalits, causing them to be separated from the rest of caste society and excluded from social, religious and economic life, has been declared by the UN Committee on the Elimination of Racial Discrimination (CERD) to fall within the scope of the International Convention on the Elimination of All Forms of Racial Discrimination.[6]

Although the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act (2013) outlaws all forms of manual scavenging (beyond just dry latrines) in India, prescribing penalties for those who perpetuate the practice and protecting those who engage in it, over 180,000 households in rural India are involved in manual scavenging.[7] Various preceding laws have outlawed the practice for over the last 60 years. The government's recognition in the 2013 Act of the historically rooted and ongoing injustice faced by communities engaged in manual scavenging is important, but also points to failures in implementing previous laws and policies to address the problem. On March 27, 2014, the Indian Supreme Court held that India's Constitution requires state intervention to end manual scavenging and rehabilitate all people engaged in the practice.[8] This meant not only ending the practice but also ending the abuses faced by the communities engaged in manual scavenging. They based their decision on data, collected by the petitioners, that "makes it abundantly clear that the practice of manual scavenging continues unabated".

Recent examples highlight the failures of previous and current government attempts to end manual scavenging and eliminate the entrenched attitudes and discriminatory practices that still bind members of affected communities to this degrading and unnecessary occupation:

- In 2017, within a period of just a 100 days, 39 people have died across India while cleaning sewers. Activist Bezwada Wilson, one of the founders and national convener of Safai Karamchari Andolan, pointed out that this was "not the first incident of the kind, but just a part of regular occurrences."[9]

[5] Human Rights Watch, Report "Cleaning Human Waste: "Manual Scavenging", Caste, and Discrimination in India", 2014, https://www.hrw.org/report/2014/08/25/cleaning-human-waste/manual-scavenging-caste-and-discrimination-india.

[6] Concluding Observations of the Committee on the Elimination of Racial Discrimination: India CERD/C/304/Add.13, September 17, 1996, https://www.hrw.org/reports/1999/in%ja/India994-20.htm.

[7] According to the latest Socio Economic and Caste Census of India in 2011, http://pib.nic.in/newsite/PrintRelease.aspx?relid=133286.

[8] Supreme Court of India, Safai Karamchari Andolan And Ors vs Union of India And Ors, 27 March, 2014, https://indiankanoon.org/doc/6155772/.

[9] 39 dead in 100 days while cleaning sewers: Bezwada Wilson, https://timesofindia.indiatimes.com/city/delhi/39-dead-in-100-days-while-cleaning-sewers-wilson/articleshow/59613603.cms.

- In 2017, insanitary latrines have been constructed in a pilgrimage town for visitors to Shravanabelagola for the coming Mahamastakabhishekha event, which opens on February 17. A group of paid workers, some of them Dalits, arrived in the township on December 10 to clean the toilets. The latrines have been constructed for religious leaders and require manual cleaning. Officers making the preparations for the Mahamastakabhishekha said the structures were designed to suit the special requirement of some religious figures who are coming for the event.[10]

- Seven manual scavengers have died in the first seven days of 2018.[11] On January 1, five workers in Mumbai were fixing a sewer line which ran 10 metres below ground level. While being lifted back by a crane, the cable broke and three of them died on the spot. One worker died the next day and the only surviving worker broke his legs and underwent surgery. In another case, three manual scavengers died on January 7 in Bangalore while cleaning a choked manhole at a residential apartment.[12] Most of the cases of sewer deaths get buried or hidden under various non-serious charges. In the case of the events on January 1, the Mumbai police booked the crane operator under IPC section 304(A) for causing death by negligence and arrested him.[13] It is noteworthy that the two incidents happened in Mumbai and Bengaluru, and not in some remote rural or tribal area where sucker machines might not be available.

Conclusion and recommendations

Culture, tradition and religious doctrine should never be permitted to undermine human rights. Although India has an extensive body of legislation, outlawing caste-based discrimination and the practice of manual scavenging, meant to protect Dalits and improve their situation, political will to ensure implementation is lacking and discrimination from the village level up to the government level continues unabated. Caste-based discrimination and the human rights violations that inevitably follow can only be avoided if decision makers at all levels decide to take action.[14]

We urge the Human Rights Council to press the government of India to:

- Identify all individuals currently engaged in manual scavenging and those who have engaged in the practice since it was outlawed under the 1993 Act (so the latter are entitled to benefits under the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act (2013)).
- Identify insanitary latrines and demolish or convert them into sanitary latrines under the provisions of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act (2013).
- Reallocate resources with the purpose of technologically upgrading the means of protection of sewer workers.
- Outline administrative measures beyond conduct rules that can be imposed if officials do not implement the Act.
- Set up a time frame within which land is to be allotted as part of the rehabilitation package for former manual scavengers as provided for in the 2013 Act.
- Ensure discrimination-free, secure and alternate livelihoods by providing skill development, vocational education and livelihoods training for identified manual scavengers.
- Create a favourable environment through community awareness and sensitization of local administration.

[10] Shravanabelagola latrines run afoul of manual scavenging law, http://www.thehindu.com/news/national/shravanabelagola-latrines-run-afoul-of-manual-scavenging-law/article22537499.ece.
[11] Seven Manual Scavengers Died in Seven Days. Why Is There Still Silence?, https://thewire.in/212220/seven-manual-scavengers-died-seven-days-still-silence/.
[12] Three manual scavengers die of asphyxiation in Bengaluru, http://www.newindianexpress.com/cities/bengaluru/2018/jan/07/three-manual-scavengers-die-of-asphyxiation-in-bengaluru-1747011.html.
[13] Powai manhole mishap: 1 more worker dead, crane operator held, https://timesofindia.indiatimes.com/city/mumbai/powai-manhole-mishap-1-more-worker-dead-crane-operator-held/articleshow/62344267.cms.
[14] http://idsn.org/caste-discrimination/how-can-we-eliminate-caste-discrimination/.

- Build the capacity of the community to promote rehabilitation efforts and self-reliance and build leadership in the community with a particular focus on Dalits.
- Ensure the judiciary is more responsive to the existing legislation.

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Please recycle

The Need to End Kuriti: Harmful Traditional Practices in Nepal*

Culture can be the source of wealth that helps a society prosper, and customs, traditions and cultural celebration can provide comfort and meaning to the lives of those living in Nepal. However, in Nepal various traditional and cultural practices, known as 'Kuriti', are carried out, regardless of their brutal and degrading character and the many ways in which they undermine human rights. It is to these practices the International Humanist and Ethical Union (IHEU) and the Society for Humanism (SOCH) Nepal would like to draw attention in this statement.

In Nepal, kuriti are regarded by many as "holy" matters, forming part of the identity of a particular society. Being perceived as a vital part of Nepalese culture, they often go unquestioned within Nepali society, despite the grave suffering they cause.

Violence resulting from kuriti is one of the major social problems of Nepal. The victims are mainly members of marginalized groups, such as women, children, untouchables (according to the "caste" system) and other economically deprived members of society.

The Nepalese Ministry of Women, Children and Social Welfare has identified fifty-seven kuriti in Nepal. These include the prosecution of individuals accused of practicing witchcraft (Boksi Pratha), child marriage, forcing women to stay in a tiny hut far from their own house during the time of their menstruation (Chhaupadi Pratha) and the offering of a girl child to a Hindu temple (Deuki Pratha).

Stories of kuriti victims

Women are continuously confronted with discrimination and exploitation in the name of tradition and custom. Stories told by victims and witnesses reveal shockingly cruel and inhuman acts:

- On the 5th of April 2013, Raj Kumari Rana, a 60-year-old grandmother, was accused from within her own family of being a *boksi* (witch). A group of villagers violently grabbed her, dragged her out of the house, took off her clothes and began beating her. They tied her to a tree, fed her human excrement and poured it over her body. Consequently, they inserted a pair of scissors and a wooden stick inside her vagina. Although being surrounded by a large crowd of villagers, only one villager, Bandi Rana, questioned the accusation made against Raj Kumari. For speaking out in the defence of the accused *boksi*, the group violently attacked Rana, inflicting superficial head injuries upon him. The following day, as the incident was broadcast in the media, the police raided the village, rescuing Raj Kumari and arresting those responsible for the horrendous acts. Due to the enormous pressure on the local police and Central District Officer by the head of the Council of Ministers, Home Minister and the National Women's commission to provide justice and treatment to Raj Kumari, the case was pushed through the court system quickly and the cost of treatment was provided for by the state.

- On the 15th of August 2013, Parwati Devi Choudhary, a 45-year-old woman, was accused of being a *boksi* and killed by her neighbour Jagadish Choudhary and his family. She was blamed for the sickness of his daughter and brutally beaten for an hour by her fellow villagers, until she died from her injuries. Parwati's husband Bagan had to escape from the perpetrators to report the murder on his wife to the police. All the men associated with the murder had already fled the village and escaped punishment.

- In 2012, Ishwori Karki was unable to provide the dowry demanded by her husband's family. Following 6 months of marriage, her husband, mother-in-law and sister-in-law began physically and mentally torturing her. After prolonged abuse, her husband's family fed her poison and attempted to hang her to make it look like she had committed suicide. Fortunately, a neighbour witnessed the attack and was able to rescue Ishwori and help her to return to the safety of her father's home.

- After Jyoti Harijan gave birth to a daughter her husband became angry. He blamed his wife for giving birth to a daughter, rather than a son, and poured kerosene on her body and set her on fire. She sustained severe burns on her face and body and nearly died.

All of these stories uncover the widespread violation of human rights in the form of so called 'cultural' customs or traditions. In Nepal, every month at least one innocent woman loses her life because of superstitious and customary practices, with the government of Nepal failing to do enough to prevent this situation.

Fundamental rights in Nepal

Kuriti are not only contrary to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, but also to the Nepalese Constitution and other national legislation.

The Constitution of Nepal of 2015 guarantees the right of all-Nepalese people to live a dignified life with access to fundamental human rights. It also affirms the right to equality and prohibits any kind of discrimination within Nepalese society. Moreover, it guarantees the fundamental rights of Nepalese women. To combat discrimination against women in Nepal, the Nepalese legal system has prohibited any type of violence against women. Article 38 (3) states that "*No woman shall be subjected to physical, mental, sexual, psychological or other form of violence or exploitation on grounds of religion, social, cultural tradition, practice or on any other grounds. Such act shall be punishable by law, and the victim shall have the right to obtain compensation in accordance with law*".

The National Code of Nepal (the Muluki Ain 2020) prohibits any kind of discrimination such as on the grounds of caste, religion, gender, ethnicity and so forth.

Despite constitutional and legal safeguards, the Nepalese government should introduce a progressive law to specifically prohibit any form of kuriti. Rather than acting on a case-by-case basis, passing an 'umbrella' Act, designed to provide a general framework of prohibited practices, would provide a more effective tool in fighting impunity and rendering justice to victims.

Conclusion and recommendations

Harmful traditional and cultural practices are continuing to occur due to a patriarchal society, impunity and sometimes unconcerned local attitudes towards human rights in Nepal.

In order to fight impunity, further legislation and existing legislation should be thoroughly implemented and perpetrators held accountable. The patriarchal system which dominates Nepal should be shaped into a system of total gender equality (as already exists on paper).

Nepalese society is overwhelmingly superstitious and adheres to strict traditional Hindu practices. When superstitions are not questioned, practices that are inherently harmful are often allowed to flourish. Kuriti not only violate basic human rights, they also pull a society backwards. The existence of harmful cultural customs is an obstacle to development, and the eradication of harmful customs is a prerequisite to building a society where equality and human rights are guaranteed for all. Because harmful cultural practices and kuriti are so often based superstition and deeply embedded in local culture and tradition, the solutions for preventing and combatting them will necessarily involve a multi-targeted approach, including legal sanctions, awareness-raising and educational measures. What is clear however is that the practice forced upon girls works in diametric opposition to all understandings of human rights and the international community, in tandem with Nepal, has an obligation to combat them.

Some recommendations:

- All states have the obligation to exercise due diligence to prevent, investigate and punish acts of violence against women, children and minorities. Nepal should ensure that those who have suffered torture, or other cruel, inhuman or degrading treatment as a consequence of kuriti are granted compensation and any necessary rehabilitation services.

- As shown above, the factors involved in perpetuating Kuriti are complex and often grounded in social, cultural and traditional conventions supported and promoted by local communities. Accordingly, legal prohibition on its own will be insufficient. Laws and international regulations against the practice need to be complemented by education and public awareness-raising activities.

- Information campaigns must be implemented in order to educate and mobilize public opinion against harmful traditional and cultural practices. Health and education practitioners, law enforcement agencies and the judiciary should be informed about the negative implications of kuriti on the health, well-being and human rights. They also should be legally obliged to report kuriti when they come across them.

- More should be done at the international level to encourage exchange of information and good practices. States should collect and share data on the prevalence and trends in harmful traditional practices.

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*Society for Humanism (SOCH) Nepal - NGO without consultative status, also shares the views expressed in this statement.

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Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up to and implementation of the Durban Declaration and Programme of Action

Written statement* submitted by Imam Ali's Popular Students Relief Society, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

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Please recycle

Messenger of peace of Imam Ali's Popular Students Relief Society (IAPSRS NGO)

Imam Ali's Popular Students Relief Society (IAPSRS NGO) introduces Hoora Mousavi as messenger of peace of this CSO in line with fostering the culture of pace and declaring its resolute opposition to war in Middle East.

Ms. Hoora Musavi is one of people those who was injured during childhood as a result of Islamic Republic of Iran-Iraq war.

Hoora Musavi is an Iranian girl that had been living in one of the Iraqi border villages in Iran-Iraq War. Beacause of Saddam's order, Hoora with her family were expelled from the country and displaced.

Finally, she did physical injured while she was migrating to Sardasht.

In spite of all the physical problems, such as lack of a hand and many burns, Hoora works as a volunteer in support of children and vulnerable women in the NGO. Furthermore, she has established one of the centers of the NGO, which is currently managed by her.

This service center like many others is located in marginalized neighborhoods within which children who are at risk or deprived of education and deprived women are provided with supports and relief services for free.

There are more than 4000 vulnerable children and women under support of the NGO from different ethnicities and religions, which Hoora is the messenger of all these people.

She aims to convey the message of peace and its necessity in different societies, with emphasis on the sharing of religions and equality of human rights and sanctifying of the children's rights.

Therefore, Hoora Mousavi has always been actively engaged in various programs of the NGO. Recently, she has announced peace declarations of the NGO in Persian Football League that is held to mark the occasion of international peace day with nearly involvement of 1000 deprived children of different ethnicities. Moreover, she went to the hard-hit area as an ambassador after occurrence of earthquake in Kermanshah with the relief team of the NGO and announced peace message of the NGO.

During the year, she is also lecturing about the necessity of the peace in the present world as the messenger of suffering of children at various universities in Iran.

As a person who has experienced suffering in his life in different stages of his life, her exemplary endurance and perseverance can be considered as a pattern for all human societies.